

SOME PROBLEMS
OF THE
PALESTINE
MANDATE

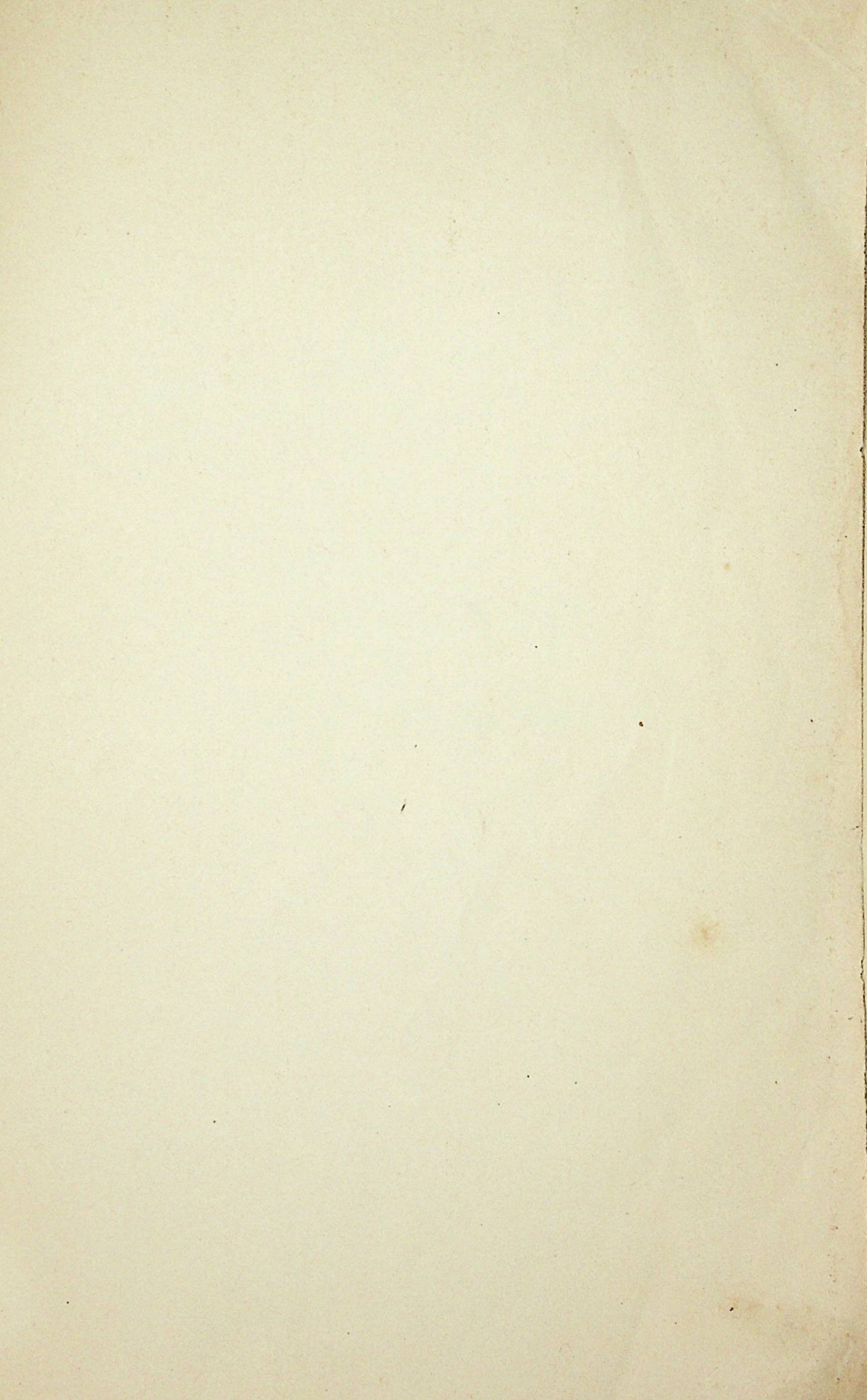
BY

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TEL-AVIV — PALESTINE
1936

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SOME PROBLEMS
OF THE
PALESTINE MANDATE

THE PRINCIPAL PUBLICATIONS
OF THE AUTHOR:

DAS VERGEHEN DES HOCHVERRATES NACH DEM GELTENDEN
UND ZUKUENFTIGEN SCHWEIZERISCHEN STRAFRECHTE
(VORENTWURF 1916) MIT BERUECKSICHTIGUNG DER
DEUTSCHEN UND OESTERREICHISCHEN ENTWUERFE,
Berlin, 1920.

THE PROBLEM OF NATIONAL MINORITIES, Kaunas, 1922.
(In Lithuanian).

LA QUESTION DES MINORITÉS A LA CONFÉRENCE DE LA
PAIX DE 1919-1920 ET L'ACTION JUIVE EN FAVEUR
DE LA PROTECTION INTERNATIONALE DES MINORITÉS,
Paris, 1929.

LA JURIDICTION DE LA COUR PERMANENTE DE JUSTICE
INTERNATIONALE DANS LE SYSTÈME DES MANDATS,
Paris, 1930.

LA JURIDICTION DE LA COUR PERMANENTE DE JUSTICE
INTERNATIONALE DANS LE SYSTÈME DE LA PROTECTION
INTERNATIONALE DES MINORITÉS, Paris, 1931.

LA PÉTITION EN DROIT INTERNATIONAL, (appeared in
the "Recueil" of the Hague Academy of Inter-
national Law, volume 40), Paris, 1932.

THE PROTECTION OF THE RIGHTS OF GERMAN JEWS FROM
THE POINT OF VIEW OF INTERNATIONAL LAW,
(lecture delivered at the Hebrew University,
Jerusalem, published in "Moznaim"), Tel-Aviv, 1934.

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F O R E W O R D.

Not without any misgivings and hesitation did I decide to compile and publish, in a separate book form, some of the articles which I have been publishing for the past two or three years on the Zionist problem and the Palestine Mandate. I am fully aware that a pamphlet such as this is insufficient to present the matter as a complete whole. It contains a number of articles written sporadically on different occasions, mostly for newspapers, so that they could not give any thorough analysis and scientific exposition.

Nevertheless I considered it worth while to collect them in one book. And it seems to me to be especially appropriate in these days of disturbances and uncertainty in Palestine.

The incessant attacks directed against the Jewish population and its peaceful constructive work in Palestine, by the Arab masses instigated and misled by their leaders, are apt to create certain confusion and misconceptions throughout the world. Here and there opinions have been expressed on the Jewish national aspirations which show no real understanding of the tragedy of the homeless Jewish people and its ideal of liberation; in certain official circles there are even symptoms of a tendency to restore law and order in the country by making concessions to the aggressor at the expense of the aggressed.

It may be that the essays herein published will be

of some assistance to the student of the Palestinian problem in his attempt to clarify for himself its substance and to form a genuine opinion on this or that aspect of Zionism and the Palestine Mandate.

Each article deals, in fragmentary form, with a particular subject of its own. Some of them are intended to throw light upon the Zionist problem from an historical point of view with special regard to its position at the Peace Conference in 1919-1920; others are devoted to the analysis of the international obligations imposed on and undertaken by Great Britain, as the Mandatory Power for Palestine, in respect of the Jewish National Home; others again deal with the juridical interpretation of certain provisions in the Palestine Mandate and with the particular place occupied by it, as a mandate *sui generis*, within the frame of the mandates system; they treat, further, of certain points in the Zionist ideology and seek to determine how far Zionism is in accord with the principles of the new order, aspired to after the World War, and to what extent it is historically sound and morally justified.

If this book succeeds in some measure in contributing towards a better understanding of the spiritual foundation of the Zionist ideal and of the legal basis of the Palestine Mandate, its object will have been attained.

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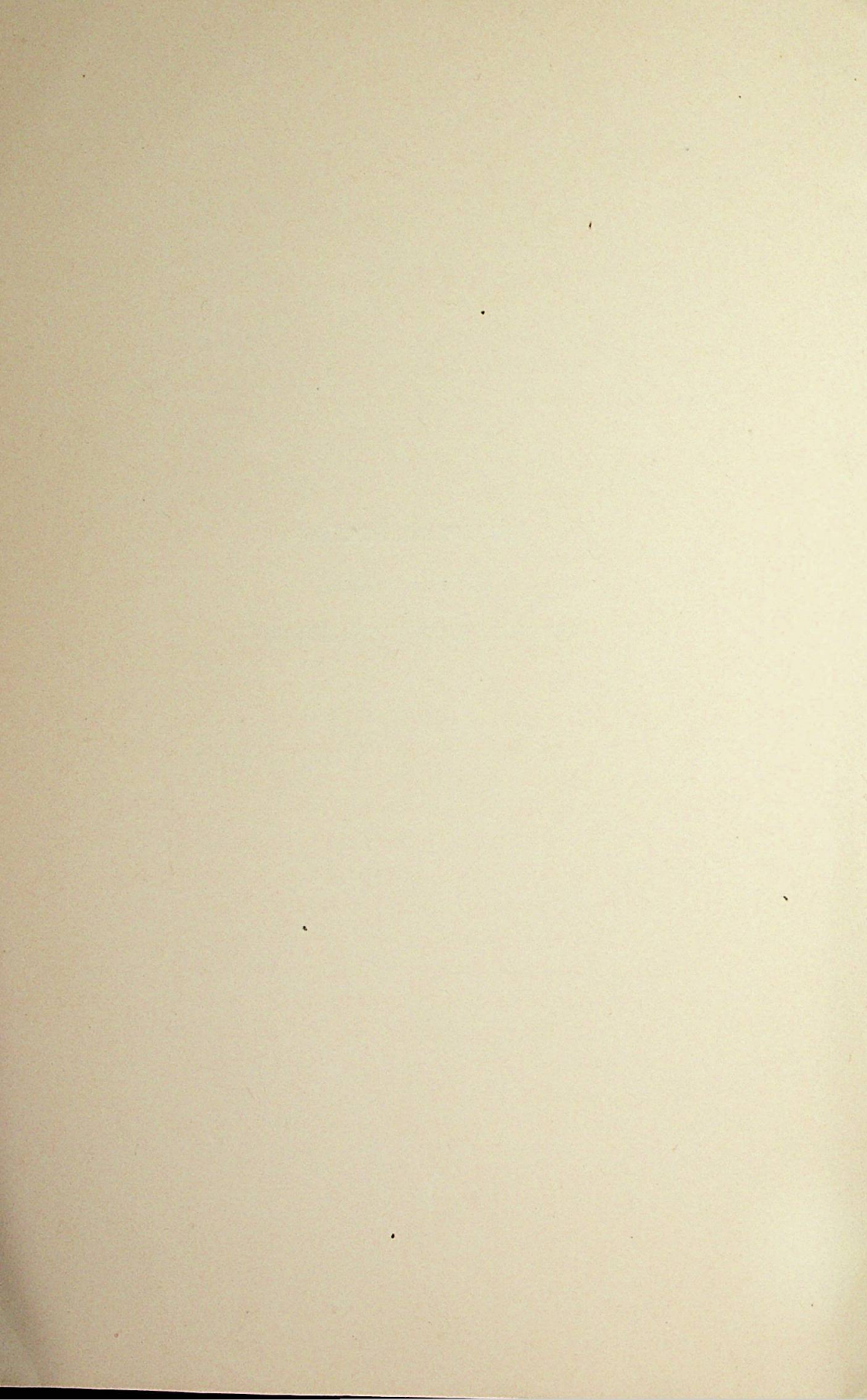
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THE LEGAL STATUS
OF THE JEWS
AT THE PEACE CONFERENCE



January, 1936.

The Peace Conference of 1919-1920 dealt, among other things, with the Jewish question. There is indeed nothing extraordinary or novel about this fact, for even a cursory glance through the protocols of the various conferences and congresses of the nineteenth and early twentieth centuries, will suffice to prove that the Jewish problem was touched upon, in one way or another, at almost every important international gathering of modern times.

The Congress of Vienna (1814-1815) was concerned with protecting Jewish rights in the German States; the Congress of Aix-la-Chapelle (1818) discussed the memoranda presented by the well-known English clergyman, the Rev. Lewis Way, embodying a scheme of Jewish emancipation; the Conference of Constantinople (1856) dealt with the rights of all Moldavians and Wallachians, including the Jews, and the Congress of Paris, in the same year, dealt with the famous *Hatti-Humayoun* in which the Sultan granted equal rights to all Ottoman subjects; the Congress of Berlin (1878) gave careful consideration to the situation of the Jews in Bulgaria, Serbia, Montenegro and Roumania, and the Conference of Algeciras (1906) to the position of Moroccan Jews; the Bucharest Peace Conference, held after the Balkan Wars of 1912-1913, treated the question of minority rights—including those of the Jews—in the territories the political status of which was to be altered as a result of these Wars.

It is, therefore, quite comprehensible and natural that

the Peace Conference of 1919-1920 could not have disregarded the suffering of the Jewish people. This is all the more clear when we recall that the Peace Conference was convened in an atmosphere of idealism generated by the programme of President Wilson who dreamt of building a new world on the ruins of the old one and securing protection and freedom for all the oppressed and persecuted. And, indeed, the Peace Conference did treat the question of Jewish minorities with more thoroughness and earnestness than any previous international assembly. Moreover, it is generally accepted that the international protection of minorities, in the far-reaching form which it assumed at the Conference, is largely due to the particular interest taken by the leaders of the Conference in guaranteeing Jewish rights.

Though there was nothing remarkable about the concern of the Peace Conference with the question of the Jewish minorities there was, however, a decided *innovation* in the fact that, in addition to the question of protection of the Jews in the countries of the Diaspora, the Conference took up the problem of the *Jews as a people* and connected *their future as a nation with Palestine*.

It is true that the project of a Jewish Palestine had been previously touched upon in the diplomatic correspondence of various governments—as, for example, in 1840-1841; the Peace Conference of 1919-1920 was, however, the *first* international assembly to give official and public consideration to the re-establishment of the Jewish people in their national homeland.

This was undoubtedly the result of the activity of the Zionist Organisation during the long and difficult

years of the War as well as at the Peace Conference itself. From the political and strategical standpoint it was altogether fitting and proper that the Zionist Organisation decided to concern itself at the Conference only with securing the realisation of Jewish aspirations in Palestine, and because of this had found it advisable to create a special body to plead the cause of Jewish minorities in the Diaspora. Accordingly, it was at the initiative of the Zionist Organisation that the *Committee of Jewish Delegations* was established in Paris early in 1919; this Committee, most of the leaders of which were outstanding Zionist personalities, led the fight for Jewish minority rights.

The fact that an entirely new aspect of the Jewish question was dealt with at the Peace Conference, inevitably brought about a marked change in the formal position occupied by the Jews there. At all previous international assemblies the Jews had figured merely as an *object of discussion*. It was certainly not to be wondered at, that Jews could not be admitted to diplomatic gatherings during the period when even the representatives of small states and, sometimes, of the very parties concerned, were not allowed to participate in the work of a congress.

The very fact that the Jewish question was treated as a problem of scattered groups, was enough to make the Jews simply an object of discussion and to exclude every possibility of their own participation in the deliberations in any form whatever. This situation was not modified in the slightest by the circumstance that from time to time Jews used to send representatives to various Conferences. At the Congress of Vienna, for example,

the Jews of Frankfort-on-the Main were represented by Jacob Baruch (the father of Ludwig Boerne), G. G. Uffenheim and J.J. Gumprecht; the Jewish communities of three Hansa towns, Hamburg, Bremen and Lübeck, sent Dr. Carl August Buchholz, a distinguished non-Jewish jurist remarkable for his sympathetic attitude towards the Jewish people. Similarly, the *Alliance Israélite Universelle* sent Netter, Kann and Veneziani to the Congress of Berlin. All these representatives, however, were nothing but *petitioners*, just as all the documents submitted by Jews to the various congresses and conferences always took the form of petitions.

But it was not only at previous international gatherings that the Jews were merely an object of discussion. At the Paris Peace Conference itself they continued to be so,—nor could they have been anything else,—as long as the protection of their minority rights was dealt with. The legal status of the Jewish bodies, which fought for Jewish rights in the Diaspora, was no other than that of a petitioner. To be sure, the “Committee on the Protection of Minorities”, which was charged by the Supreme Council with the task of working out the terms of the minority treaties, informed the Council that if it decided to give an audience to a member of the Polish delegation, it would also invite a Jewish representative to set forth the Jewish viewpoint. As things turned out no Jewish representative was heard by the Committee, and even if one had been called in, he would have been admitted merely as a petitioner, in quite the same way as the Committee on the League Covenant or that on International Labour Legislation permitted delegations from women’s organisations to lay their claims before them.

In characterising the Jewish representatives who pleaded the cause of Jewish minority rights as petitioners, we have not the slightest intention of using the term in any derogatory sense, nor do we wish to intimate that their methods were the same as those of the Jewish delegates to the congresses of Vienna or Berlin. The latter attempted to be effective and influential in the spirit of their own time; the Committee of Jewish Delegations, on the other hand, was a democratic body whose political moves were inspired by a nationalistic conception of Jewish life and problems.

It is clear, then, that the consideration of the Jewish minority problem brought with it no change in the legal status of the Jews at the Peace Conference. And if, nevertheless, the Jews ceased, even partially, to be merely an object of discussion, and succeeded in achieving a certain juridical status—however restricted and rudimentary—it may safely be said that it was due to the *new conception* of Jewish affairs manifested by the Peace Conference.

True to the principle of self-determination, the leaders of the Peace Conference no longer looked upon the Jews as scattered human fragments, but began to consider them collectively as a *single national entity* entitled to its *own existence* and to the *re-establishment of its state centre in Palestine*. Accordingly the Peace Conference did not hesitate to treat the Jews in the like manner as all the other nationalities whose representatives came to Paris to lay before the world's highest tribunal their claims to independent national existence.

That the Peace Conference considered the Jews a national unit entitled to establish its own state, is clearly

shown by the documents to which we shall now refer.

On November 15, 1918, i. e. four days after the Armistice, Colonel House, Wilson's closest adviser, who was already in Europe, cabled Wilson a summary of the contents of the memorandum which the French Government had prepared concerning the procedure of the Peace Conference: who was to be invited to it, how it was to be conducted, etc. Section 4 of the memorandum proposed that the Conference admit as members the Allied Powers and the new States which had already been recognized—Poland and Bohemia (i. e. Czecho-Slovakia). Section 4 further declared that it was necessary to adopt a definite viewpoint with regard to those Allies who had made separate peace treaties with the enemy: Roumania and Russia. Finally, the section raised the question of the form of representation to be granted to the nationalities in the process of forming states which had not yet been recognized: the Jugoslavs, the Finns, the Ukrainians, the Lithuanians, the Esthonians, the Latvians, the Arabs, the Armenians and the Jews of Palestine¹).

Jews are expressly included among the peoples whose right to a national territorial existence is recognized. Even if the phrase used here is "Jews of Palestine" and not the "Jewish people", we may be sure that the reference was not only to those Jews living in Palestine at the time of the Peace Conference, but to all those Jews whose intention it was to re-establish themselves therein.

At the end of November 1918, the legal adviser

¹) See David Hunter Miller, *My Diary at the Peace Conference with Documents*, New York, 1928, vol. II, pp. 11 *et seq.*

to the American delegation, David Hunter Miller, submitted to Colonel House his observations on this French proposal. On the question of admitting nationalities who were in the process of forming states, Miller made the following suggestion: "National groups not forming states, such as the Armenians, the Jews in Palestine, and the Arabs, would doubtless be received and heard through their representatives by Committees of the Congress, but could not be admitted to the Congress as member Powers¹⁾."

The fact that Miller did not recommend admitting these nationalities as members, is not surprising when we note the fact that even neutral states were excluded from membership.

At the inaugural meeting on January 18, 1919, Clemenceau, in his capacity as chairman, submitted to the Conference a new draft of Regulations which were adopted without discussion. Article 1, Paragraph 5, of these Regulations dealt with the problem with which we are here concerned, and provided that neutral Powers and states in process of formation would be heard, whether orally or in writing, at the invitation of the five Principal Allied Powers, at meetings especially devoted to the examination of questions which concerned them directly²⁾.

Accordingly, we see that the Regulations of the Peace Conference accorded the same status to the states in process of formation as to the neutral powers. Both could be heard only at the invitation of the Great Powers, a stipulation which was no more than a grudging

¹⁾ *Ibid.*, pp. 39-40, 56.

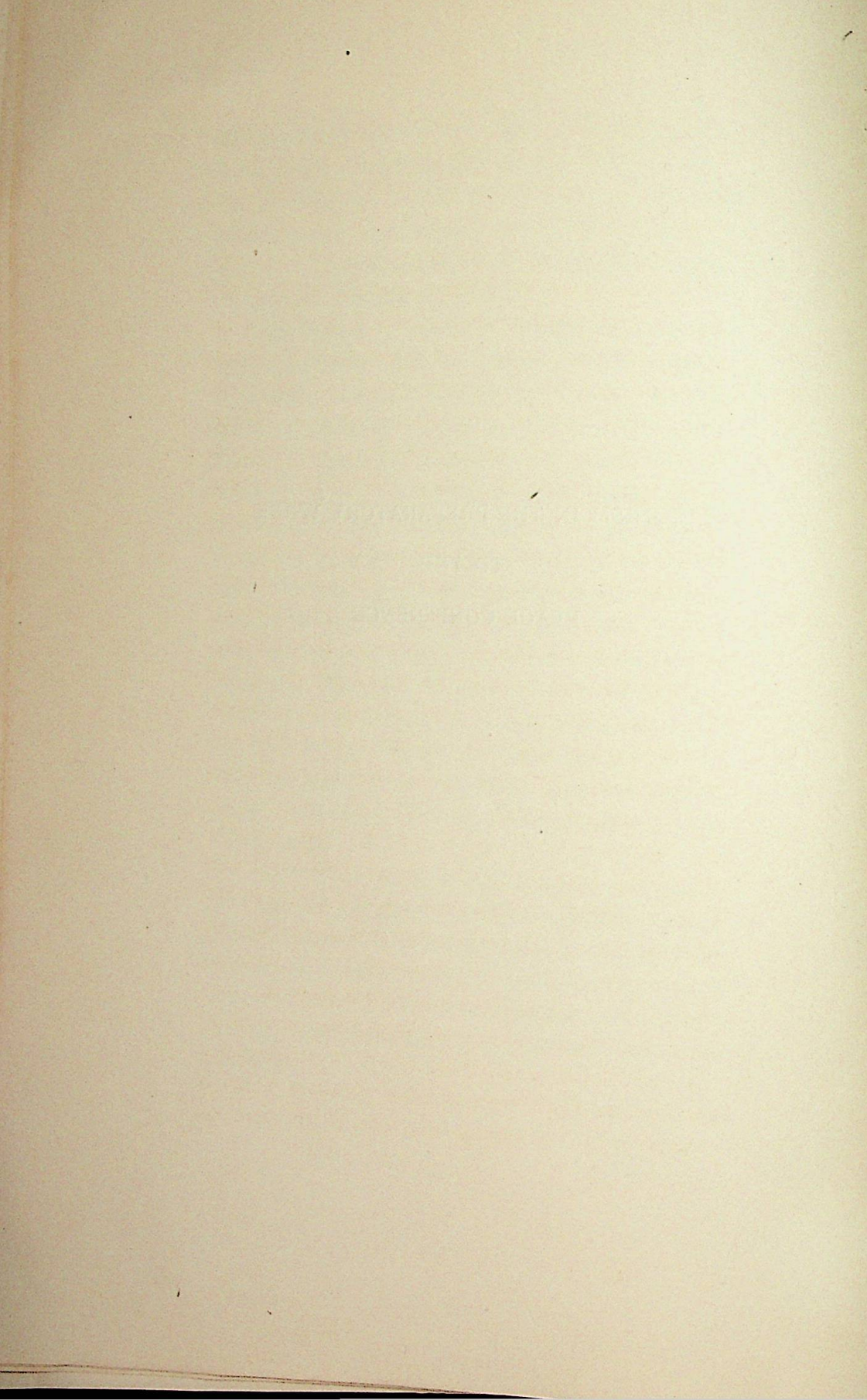
²⁾ *Id.*, *ibid.*, vol. III, p. 355.

and half-hearted recognition that they had any rights at all. Limited as it was in its scope, Article 1, Paragraph 5, was, moreover, not applied by the Supreme Council in a liberal sense; the Conference refused, for instance, to receive the delegation sent by the Persian Government to express its demands and claims.

The history of Article 1, Paragraph 5, of the Regulations makes it clear that the term "*states in process of formation*" included the Jewish people. It was, therefore, not at all accidental that later on the Peace Conference decided to invite representatives of the Zionist Organisation to express their demands orally. And on the 27th of February 1919, a Zionist delegation did indeed appear before the Supreme Council and solemnly proclaimed before the rulers of the world the age-old aspirations of the Jewish people regarding Palestine. The Zionists were thus accorded exactly the same status as the Syrians, Armenians, Albanians, Ukrainians, etc. We have intentionally omitted to mention the Arab delegation, headed by Emir Feisal, inasmuch as the Hedjaz had already been recognized as an independent state and enjoyed, at the Conference, the same status as all the other small powers.

In the light of what has been said it is easy to see that the invitation tendered to the Zionist Organisation to appear before the Supreme Council was of far-reaching historical and political significance: it implied the *recognition of the Jews as a national unit entitled to its own political existence*, as a "*state in the process of formation*".

ZIONISM IN THE PREPARATORY WORK
TO THE
PEACE CONFERENCE



February, 1936

The issue of the Balfour Declaration by the British Government (on November 2, 1917), as well as the subsequent expressions of sympathy made by various Governments, such as those of France (February 1918), Italy (May 1918) and the United States of America (August 1918), were sufficient evidence to prove that one of the salient political problems with which the Peace Conference would have to deal was the Zionist problem. It is, therefore, not surprising that, even before the opening of the conference, certain Governments found it necessary to prepare for the task of treating this problem, just as they had done in reference to other matters.

At the close of the Peace Conference the British Government published the preliminary work of its experts, so that we are now in a position to know exactly in what manner the Zionist problem was approached and how it was expounded.

Monograph No. 162 of the "Handbooks prepared under the Direction of the Historical Section of the Foreign Office" is devoted entirely to Zionism. In the editorial note to this volume, just as in the introductory remarks of all the other monographs, it is expressly stated that, "although this volume was prepared under the authority, and is now issued with the sanction, of the Foreign Office, that Office is not to be regarded as guaranteeing the accuracy of every statement which it contains or as indentifying itself with all the opinions

expressed in the volume; the book was not prepared in the Foreign Office itself, but is in the nature of information provided for the Foreign Office and the British Delegation."

This Monograph is primarily concerned with the historical and informative side of the Zionist movement and is, therefore, mainly descriptive in character. Its authors, it seems, did not so much aim at declaring what attitude was to be taken towards Zionism; from the very outset it was their premise that this attitude was, as a matter of principle, declared as positive. They merely wished to give a clear and complete survey of the ideological basis of Zionism, its origin, constitution and achievements, of the place Palestine had always held in Jewish history from biblical days until today, and so on. It is interesting to note that Zionism is spoken of therein as "the oldest nationalist movement in history", and upon Moses is bestowed the title of "the first Zionist".

In general it may be said that this Handbook is a fitting and reliable introduction to Zionism, which also contains some valuable remarks of a political nature.

The authors of this Monograph consider the definition of Zionism given by the Oxford Dictionary as inadequate. "A Zionist", they claim, "is something more than an advocate of colonizing of Palestine by modern Jews."

They define the Palestine question as "one of the great problems of the Peace Conference" and "the Governments of the Allied Powers, especially Great Britain, the United States, France and Italy, are believed to see its solution in some government by or for the Jews."

The Monograph also expresses its opinion on a communication published in the *Jewish Chronicle* of November 15, 1918, in which it was suggested that Palestine is to be under British suzerainty, but to be forthwith administered by a "Jewish Commonwealth". The country is to be called "Israel" and the inhabitants "Israelites", whether they profess the Jewish religion or not. Hebrew is to be the language of the country, the governor a Jew, preferably one who has distinguished himself as an administrator in the British Empire. The governor is to be assisted by a State Council, partly nominated and partly elected. There is to be complete religious toleration, but Jewish law is to be the fundamental law of the land, and Jewish Sabbaths and Holy Days are to be the recognized days of rest. This scheme is considered in the Monograph as "somewhat premature."

As for the attitude of the Arabs towards Zionism, the following statement, reported to have been made in London on December 11, 1919, by the Emir Feisal, is mentioned:

"Arabs are not jealous of Zionist Jews and intend to give them fair play, and the Zionist Jews have assured the Nationalist Arabs of their intention to see that they too have fair play in their respective areas. Turkish intrigue in Palestine has raised jealousy between the Jewish colonists and the local peasants; but the mutual understanding of the aims of the Arabs and the Jews will at once clear away the last trace of this former bitterness."

As for the place of Hebrew in the future Palestine, the authors of this Monograph have a very far-reaching statement. "The Hebrew language," they say, "is already

spoken in many parts of Palestine by thousands of inhabitants and by more people than any other language except its sister-tongue, the Arabic. For the adoption by non-Jews of a Jewish dialect Zionists can point to the instance of Salonica, where Spanish Jews form about half the population and their *Ladino* or Spanish Hebrew has been to some extent adopted as the language of commerce by Jew and non-Jew alike."

And the concluding paragraph of the Monograph reads as follows :

"Outside Jewry, an overwhelming mass of public opinion would appear to favour Jewish administration in Palestine, not that it could ever provide a home for the millions of Jews in eastern Europe, but because it would satisfy their secular aspirations, raise their sense of dignity and self-respect, and relieve, to some extent at least, the pressure of the congested districts in which circumstances have forced them to congregate."

While Handbook No. 162 was entirely given to the treatment of Zionism, Handbook No. 60 on "Syria and Palestine" also did, to some extent, touch upon the Zionist question. It notes as the most important event since the occupation of Palestine "the recruiting of Palestine Jews, whatever their national states, into the British Army." Alongside of this it is also pointed out that the initiative was taken as "the result of the demand of the Jewish population itself, rather than from any desire or even encouragement from the British authorities."

"The essence of the Zionist ideal," says Handbook No. 60, "is the desire to found upon the soil of Palestine a revived Hebrew nation based upon an agri-

cultural life and the use of the Hebrew language . . . Jewish national development, cultural, agricultural and economic, is inevitable and natural in Palestine after the war. There is so much unoccupied and uncultivated land in Palestine that there is plenty of room for Zionist development without ousting the existing Moslem population. The Jews have already shown that land, hitherto regarded as barren, can be converted in a very short space of time into rich vineyards, or into fruit and almond plantations. With the Arab movement centered at Damascus, Zionism in Palestine would be a help rather than a hindrance to it; for that movement would only suffer from the attempt to absorb a district ethnologically and otherwise so different from countries in which the Arab element stands alone or is distinctly predominant . . . History, age-long associations, and present-day conditions point alike to the separability of Syria and Palestine; and such a separation violates none of the principles laid down by the Allied Powers at the commencement, or recognized by them in the course, of the recent war."

Besides of the work of the British experts, we also have on hand today the documents which were prepared in the latter part of the War for President Wilson and the other members of the American delegation. In spite of the fact that they were not published by the American Government, their authenticity cannot be questioned, for their publisher was none other than the legal adviser to the American Peace Delegation, David Hunter Miller.

President Wilson, as is well known, formed a special commission of experts (The Enquiry Commission) for the purpose of studying all the problems to be

taken up by the Peace Conference; the Commission was directed to work out, in the spirit of Wilson's principles, detailed suggestions for the solution of these problems. At the head of this Commission were such renowned scholars as Dr. S. E. Mezes and Dr. Isaiah Bowman (for territorial problems), Dr. R. B. Dixon (for ethnographical matters), Dr. James T. Shotwell (for historical questions), Prof. Mark Jefferson (for matters of geography), Dr. A. A. Young (for economics and statistics), the late George Lewis Beer (for colonial affairs) and many other outstanding figures. The legal advisers were David Hunter Miller and James Brown Scott.

On January 21, 1919, the American commission of experts submitted to President Wilson the results of its work, and among others they contained definite suggestions for the solution of the Zionist and Palestinian problems.

As for Palestine, the following is said in the "Outline of Tentative Report and Recommendations":

"PALESTINE.

It is recommended:

- 1) That there be established a separate state of Palestine.
- 2) That this state be placed under Great Britain as a mandatory of the League of Nations.
- 3) That the Jews be invited to return to Palestine and settle there, being assured by the Conference of all proper assistance in so doing that may be consistent with the protection of the personal (especially the religious) and the property rights of the non-Jewish population, and being further

assured that it will be the policy of the League of Nations to recognize Palestine as a Jewish state as soon as it is a Jewish state in fact.

- 4) That the holy places and religious rights of all creeds in Palestine be placed under the protection of the League of Nations and its mandatory.

DISCUSSION.

Ad 1) The separation of the Palestinian area from Syria finds justification in the religious experience of mankind. The Jewish and Christian churches were born in Palestine, and Jerusalem was for long years, at different periods, the capital of each. And while the relation of the Mohammedans to Palestine is not so intimate, from the beginning they have regarded Jerusalem as a holy place. Only by establishing Palestine as a separate state can justice be done to these great facts.

As drawn upon the map, the new state would control its own source of water power and irrigation, on Mount Hermon in the east to the Jordan; a feature of great importance since the success of the new state would depend upon the possibilities of agricultural development.

Ad 2) Palestine would obviously need wise and firm guidance. Its population is without political experience, is racially composite, and could easily become distracted by fanaticism and bitter religious differences.

The success of Great Britain in dealing with similar situations, her relation to Egypt,

and her administrative achievements since General Allenby freed Palestine from the Turk, all indicate her as the logical mandatory.

Ad 3) It is right that Palestine should become a Jewish state, if the Jews, being given full opportunity, make it such. It was the cradle and home of their vital race, which has made large spiritual contributions to mankind, and is the only land in which they can hope to find a home of their own, they being in this last respect unique among significant peoples.

At present, however, the Jews form barely a sixth of the total population of 700,000 in Palestine, and whether they are to form a majority, or even a plurality, of the population in the future state remains uncertain. Palestine in short, is far from being a Jewish country now. England as mandatory, can be relied on to give the Jews the privileged position they should have without sacrificing the rights of non-Jews.

Ad 4) The basis of this recommendation is self-evident¹⁾.

From the aforestated report it can be seen that the conclusions of the American commission of experts were particularly clear and of great weight and significance.

¹⁾ See D. H. Miller, *op. cit.*, vol. IV, pp. 263-264.

It may be worth noting here that in the memorandum which the Committee of Naval Officers consisting of W. Evans, H. E. Yarnell and Thomas C. Hart, prepared in November 1918 for Admiral W. S. Benson, American expert in naval questions, the following statement was made about Palestine: "Palestine to be formed into a Jewish state". D. H. Miller, *op. cit.*, vol. II, p. 103.

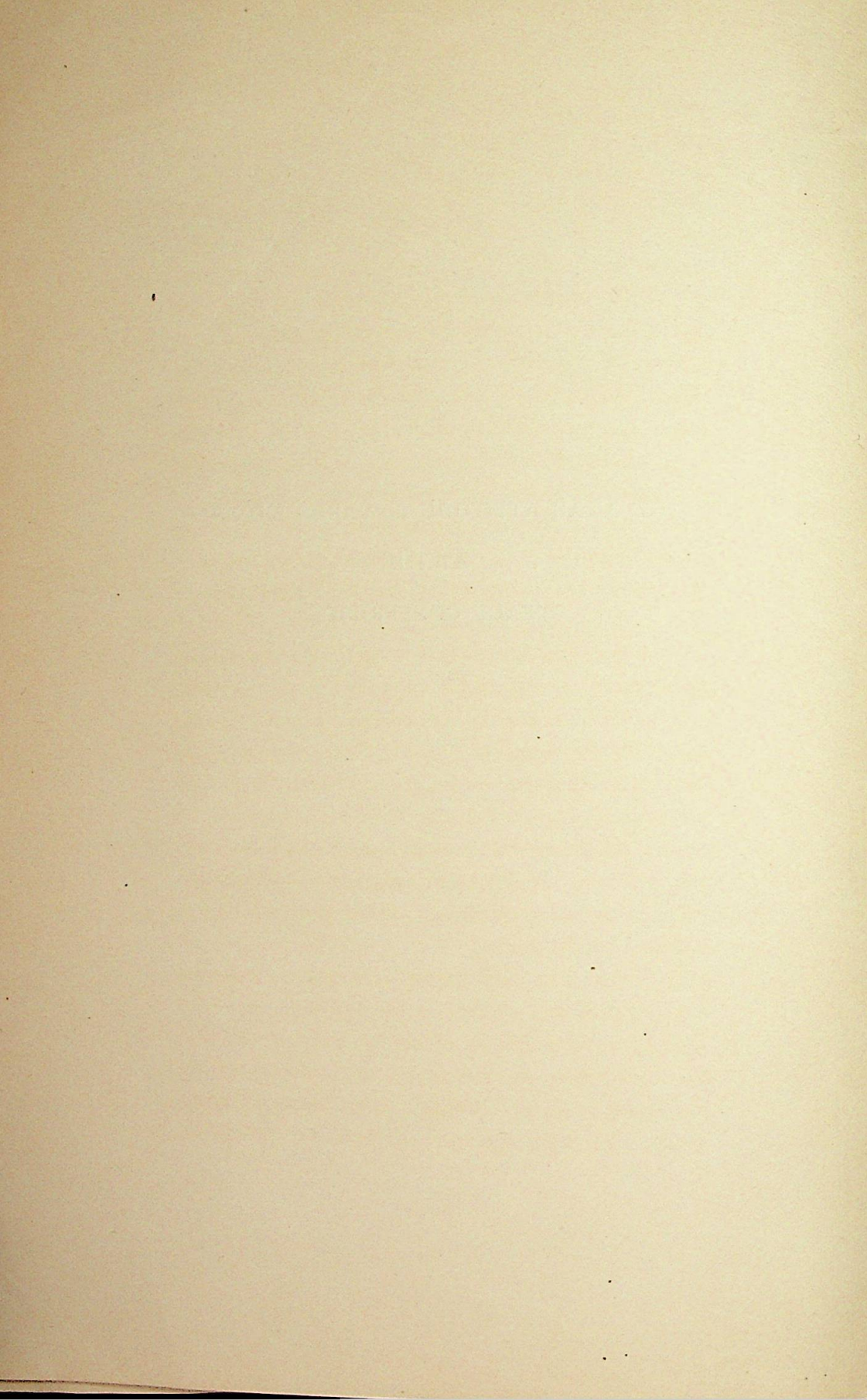
They hold a well thought-out and concrete political programme; the Peace Conference and the League of Nations must make it possible for the Jews to turn *Palestine into a Jewish state* and actually assist them in this task.

To give these conclusions their due appreciation we must bear in mind the fact that we are not dealing here with an opinion of an individual, but with a collective attitude of a group of scholars and experts. The Jewish and Palestine problem confronted them not in and for itself, but was one of the links of a long chain of world problems, which they had to answer, and which it was their ardent desire to solve in an organic and harmonious manner. We are also not to forget that they were the experts on the part of a Government which had no personal interest or ambition in the solution of the Palestine problem. They were, therefore, in a position where they could be absolutely impartial and objective. And their conclusions gain in value all the more if we take into consideration the fact that they were called upon to formulate these suggestions not without any definite and ultimate purpose but bearing in mind President Wilson's principles of liberty, equality and self-determination.

For all those who, out of a false and superficial concept of the idea of self-determination of nations, still tend to consider Zionism as a movement in direct opposition to the basis of the new world order, these conclusions of the American Enquiry Commission should serve as an outstanding proof that the Zionist aspirations not only do not desecrate the principle of self-determination, but on the contrary, are a logical and natural

outgrowth of it. The true interpretation of this principle by Wilson's close collaborators brought them to the full acknowledgment and recognition of Zionism and its historical, political and moral justification.

THE ARAB ATTITUDE TOWARDS ZIONISM
AT THE
PEACE CONFERENCE



February, 1936.

It is often asserted by Arab leaders in their fight against Zionism that at the Paris Peace Conference of 1919-1920 the Arab representatives claimed Palestine as part of the projected Arab State and voiced their protest against the recognition of Jewish rights to Palestine; and that in giving consideration to Jewish aspirations the Peace Conference entirely disregarded their opposition and protests. The aim of this article is to examine this assertion and, in the light of the official documents of the Peace Conference, try to see how accurate and real it is.

When the British Government came to the Peace Conference, it was under an obligation to the Jewish people by the Balfour Declaration in which it had expressed its sympathy with the Zionist aspirations and had undertaken to use its best endeavours to facilitate the establishment in Palestine of a National Home for the Jewish people. At the same time the British Government was bound to the Allies, and particularly to France, by a number of secret agreements. It had also made various promises to the Arabs.

There is no need to dwell here upon the numerous secret agreements reached by England and France with regard to the partition of the countries of the Near East. They were all characteristic of the old imperialistic diplomacy, and were made public by the Bolshevik Government. The most important of them, the Sykes-Picot

Agreement of May 1916, provided for an "international administration" of Palestine, "of which the form shall be determined after consultation with Russia, and later in agreement with the other Allies and with representatives of the Sherif of Mecca." The term "Palestine" was here used to describe only the central part of the country, lying to the west of the Jordan River. The northern part was to be given to France; the strip of coast near and including Haifa and Acre, to England; and the southern part was to be included in the Arab Zone "B", a sphere of British influence. Later, in December 1918, Lloyd George asked Clemenceau for British control of Palestine and Clemenceau agreed.

As far as the promises to the Arabs were concerned, it is known that at the beginning of 1915 the British High Commissioner in Egypt, Sir Arthur McMahon, entered upon negotiations with the Sherif of Mecca, Hussein, with regard to the conditions under which the Arabs would revolt against Turkey and join the Allies. From July 1, 1915, to January 25, 1916, Hussein and McMahon exchanged a number of letters dealing with the frontiers of the future Arab State. The British Government has never made these letters public, but their contents are known from unofficial sources.

The Arabs claim that in this correspondence Palestine was promised to them as part of an independent Arab State or Confederation of Arab States. The British Government, on the other hand, has declared upon a number of occasions (notably the White Paper of 1922 and answers to questions asked in Parliament after the disturbances of 1929) that Palestine was not included in the territory then pledged to the Arabs.

It is not within the scope of this article to analyse the contents of the McMahon—Hussein correspondence, nor to examine its juridical value. I shall only make use of the official documents, presented by the Arabs to the Peace Conference, to see what basis there is in them for the claim that Palestine had been promised to the Arabs.

The Emir Feisal was the Chief of the delegation sent to the Peace Conference by Hedjaz, which had already been recognized as an independent state. On February 6, 1919, he appeared before the Supreme Council of the Conference in order to present the Arab claims; he did this in the name of his father, King Hussein, whom he always described as the leader of the Arab nationalist movement. In his speech, Feisal, referring to the memorandum which he had submitted to the Conference on January 29, 1919, asked for the independence of all the Arabic speaking peoples in Asia, from the line Alexandretta-Diarbekir southward¹⁾. He admitted that the greatest difficulty would be in reference to Syria. Syria, he said, claimed her unity and independence, and the rest of the liberated Arabic areas wished Syria to take her natural place in the future confederation of liberated Arabic speaking Asia, which was the aim of all Arab hopes and efforts.

With regard to the province of Lebanon, Feisal declared that some of its people were asking for French guarantees, though others did not wish to sever their connection with Syria. He was willing to admit their independence, but thought it essential to maintain some form of economic union in the interest of mutual development. He hoped nothing would be done now to

¹⁾ See D. H. Miller, *op. cit.*, vol. XIV, pp. 227 *et seq.*

render the admission of Lebanon to the future confederation impossible, if it so desired.

As for Palestine, Feisal made the following statement: "On account of its universal character, I shall leave Palestine on one side for the mutual consideration of all parties interested. With this exception, I ask for the independence of the Arabic areas enumerated in the memorandum¹)."

We see, then, that at the Peace Conference the authorized leader of the Arab national movement demanded the independence of all the Arab territories *except Palestine*, and thus formally excluded Palestine from the scope of Arab nationalist-political aspirations.

This clear and unambiguous statement of Feisal's is on file in the foreign offices of all the Great Powers, and the Arab leaders cannot possibly deny its existence as they do that of the letter which he sent to Professor Frankfurter²).

In the light of this official statement of Feisal's, the entire controversy regarding the Hussein—McMahon correspondence loses a great deal of its significance. It is hardly logical to quote promises — which, moreover,

¹) *Ibid.*, p. 230. See also Ministère des Affaires Etrangères, *Procès-verbaux*, 6 février 1919, (secrète), Paris, p. 3.

²) In this letter, dated March 1, 1919, Feisal expressed his deep sympathy for the Zionist movement, characterized the proposals submitted by the Zionist Organisation to the Peace Conference as moderate and proper, promised to help them and declared that there is place in the country for both Arabs and Jews.

In an interview accorded to the writer by Feisal, at Geneva in 1930, Feisal did not deny the authenticity of the letter to Frankfurter, but claimed that he could not remember having written it. He had one laconic answer to my numerous questions: "I wrote so many letters during the Peace Conference that I cannot remember now whether I wrote that one, too."

the other party denies having made — when later on the Arab representatives themselves definitely stated to the Peace Conference that Palestine was not one of the territories claimed as an integral part of the Arab State or Arab Confederation.

It must be admitted that Feisal merely talked about the “universal character” of the country; that phrase, however, can mean but one thing besides the Christian Holy Places—the historical connection of the Jews with Palestine.

There is a document, signed by Feisal several weeks prior to his appearance before the Supreme Council, which proves very clearly that in making his statement he must have had the Jewish National Home in mind. The document is an agreement signed in London early in January, 1919, by Feisal, representing and acting on behalf of the Arab Kingdom of Hedjaz, and Dr. Ch. Weizmann on behalf of the World Zionist Organisation. Upon signing this agreement, Feisal actually added a note to the effect that he would carry out the obligations assumed therein only if the demands he had made of the British Government in his memorandum of January 4, 1919, were granted. But this does not detract from the importance of the agreement as one of the most significant documents throwing light upon the attitude of the Arab representatives towards Zionism¹⁾.

The preamble to this agreement emphasizes the racial kinship and ancient bonds existing between the Arabs and the Jewish people; it states that the two

¹⁾ The full text of the agreement was first made public in 1928, by the legal adviser to the American Delegation, D. H. Miller, *op. cit.*, vol. III, pp. 188-189; vol. I, p. 67. In *The Times* of June 10, 1936, the full text appeared again, this time by Prof. Ch. Weizmann, signatory to the agreement.

parties realise that "the surest means of working out the consummation of their national aspirations, is through the closest possible collaboration in the development of the Arab State and Palestine", and that they are desirous of "confirming the good understanding which exists between them." Nine articles then follow.

The first article provides that the Arab State and Palestine in all their relations and undertakings shall be controlled by the most cordial goodwill and understanding and that to this end Arab and Jewish duly accredited agents shall be established and maintained in the respective territories.

According to article II the definite boundaries between the Arab State and Palestine were to be determined immediately after the Peace Conference by a Commission agreed upon by the two parties.

Article III states that "in the establishment of the Constitution and Administration of Palestine all such measures shall be adopted as will afford the fullest guarantees for carrying into effect the British Government's Declaration of the 2nd November, 1917."

Article IV then reads: "All necessary measures shall be taken to encourage and stimulate immigration of Jews into Palestine on a large scale, and as quickly as possible to settle Jewish immigrants upon the land through closer settlement and intensive cultivation of the soil. In taking such measures the Arab peasant and tenant farmers shall be protected in their rights, and shall be assisted in forwarding their economic development".

Article V guarantees religious freedom and stipulates that no religious test shall ever be required for the exercise of civil or political rights, while Article VI

provides that the Mohammedan Holy Places shall be under Mohammedan control.

Article VII states that a Commission of experts is to be sent to Palestine by the Zionist Organisation in order to make an economic survey of the country, and that the Zionist Organisation will place this Commission at the disposal of the Arab State for the purpose of making a similar survey there. Further, the Zionist Organisation will use its best efforts to assist the Arab State in providing the means for developing the natural resources and economic possibilities thereof.

In article VIII the two parties agree to act harmoniously before the Peace Conference on all the matters treated in the Agreement.

The ninth and last article binds the two parties to refer any disputes between them to the arbitration of the British Government.

The contents of this agreement are clear enough and require no comment. Feisal, the representative of Hedjaz and leader of the Arab nationalist movement, explicitly recognizes the Balfour Declaration and Zionist aspirations. And the statement with regard to Palestine which he made a few weeks later—on February 6, 1919—before the Supreme Council was altogether in accord with the obligations he had assumed in the agreement we have just summarized.

There is yet another document, which shows that Feisal felt the fate of Palestine to be connected with the Jews. I mean to refer to the memorandum signed by Feisal on January 1, 1919, and published by David Hunter Miller ¹⁾. Mr. Miller indicates nowhere whether or

¹⁾ Id., *ibid.*, vol. IV, pp. 297—299; vol. I. p.97.

not the document was officially submitted to the Peace Conference, but, in the final analysis, this is of no real importance. *What is important* is the fact that the memorandum bears Feisal's signature and *was circulated among the delegates at the Conference.*

In this memorandum Feisal enumerates the "various provinces of Arab Asia,—Syria, Irak, Jezireh, Hedjaz, Nejd, Yemen". It does not include Palestine in the list, but it seems to him to be in a category of its own. "In Palestine", says Feisal, "the enormous majority of the people are Arabs. The Jews are very close to the Arabs in blood, and there is no conflict of character between the two races. In principle we are absolutely at one. Nevertheless, the arabs cannot risk assuming the responsibility of holding level the scales in the clash of races and religions that have, in this one province, so often involved the world in difficulties. They would wish for the effective super-position of a great trustee, so long as a representative local administration commended itself by actively promoting the material prosperity of the country".

It is evident from this memorandum that Feisal admits that Palestine is not a part of the Arab State, and, considering its special character and its relation to the Jews, feels that it must be placed under the rule of a strong mandatory Power.

At the Peace Conference Feisal was not the only representative of the Arab nationalist movement, and on February, 13, 1919, the Supreme Council also listened to a delegation from Syria headed by Chekri Ganem, chairman of the Central Syrian Committee 1).

1) *Id.*, *ibid.*, vol. XIV, pp. 399 *et seq.*

The Syrian delegation demanded that Syria be considered a single national unit and recognized as an independent State. They protested against Feisal's desire to include Syria in the projected Arab State. They claimed that the Syrians are not Arabs, and that the fact that they spoke Arabic and were Moslems in religion, was not sufficient to create a bond of union between the cultured inhabitants of modern Syria and the primitive and backward population of Hedjaz. They went so far as to say that if they could not secure national independence for Syria, they would prefer to remain under Turkish rule. The Turks might continue to massacre them, but, at least, they would be able to look forward to obtaining complete freedom at some future time. The delegation asked that France be chosen to guide and assist an "independent and undivided federated Syria"; at the same time the delegation promised to give the various elements of the population a large measure of local autonomy.

The delegation also indicated what seemed to it to be the proper boundaries of the future Syria, and these boundaries included Palestine. Under the circumstances the delegation could not help but be aware of how important a political factor Zionism had become and how inevitable it was that the Peace Conference take it into consideration while settling the affairs of the Near East. The delegation, therefore, found it necessary to explain its attitude towards Zionism to the Supreme Council. "May we", they asked, "say one word as regards Palestine — although the subject is said to be a thorny one.

Palestine is uncontestedly the Southern portion of our country. The Zionists claim it. We have suffered too much from sufferings resembling theirs, not to throw wide open to them the doors of Palestine. All those among them who are oppressed in certain retrograde countries are welcome. Let them settle in Palestine, but in an autonomous Palestine, connected with Syria by the sole bond of federation. Will not a Palestine enjoying wide internal autonomy be for them a sufficient guarantee?

If they form the majority there, they will be the rulers. If they are in the minority, they will be represented in the government in proportion to their numbers.

Is it necessary, in order to establish them, to dismember Syria, to take from it its means of access and its historic safeguard against any invasion (which always took that route), and to constitute a State in the midst of a country which, as a consequence, would be hostile to them?"¹⁾

The Syrian delegation thus declared that it was ready to open the doors of Palestine so widely that the Jews might, in the course of time, even constitute a majority, but only on condition that Palestine should not be separated from Syria and should form an autonomous part of a Syrian federation.

This was the attitude towards Zionism of the Arab representatives at the Peace Conference. Their statements are very formal and unequivocal; they cannot be doubted or denied, for they are to be found in the official minutes of the Conference. No matter how much Arab leaders today may wish to belittle the importance of the statements solemnly made at that time by their

¹⁾ *Ibid.*, pp. 414—415.

authorized and responsible representatives, they will not succeed in any such attempt. It is and will remain an indisputable fact that the legitimate spokesman of the Arab national movement at the Peace Conference, Feisal, excepted Palestine from the territories claimed by that movement.



**THE PRINCIPLES OF
PALESTINIAN CITIZENSHIP
AS LAID DOWN BY INTERNATIONAL LAW**

September, 1928¹⁾.

If the League of Nations and its Permanent Mandates Commission have encountered any difficulties in settling questions relating to nationality in the mandated territories of category B and C, they have not been burdened with any difficulties as regards the A Mandates of the former parts of the Turkish Empire.

Syria and Mesopotamia (Iraq) were recognized as "independent States" by Article 94 of the Treaty of Sèvres of August 10, 1920; the draft mandates, which were at that time in preparation, have therefore rightly provided for Syrian and Lebanese, as well as Mesopotamian nationalities. And though the projected text of the mandate for Mesopotamia never came into force the existence of an independent Mesopotamian nationality could *a fortiori* be assumed from the treaties which Great Britain concluded with the King of Iraq.

Certain doubts arose as regards the existence of a particular citizenship in the mandated territory of Palestine. The Palestine Mandate did not for the time being recognize the country as an independent State²⁾ and did not even consider it as a goal to be attained in the near

¹⁾ Published in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Berlin.

²⁾ The same opinion was expressed on the subject by the Vice-Chairman of the Permanent Mandates Commission, D.F.W. Van Rees: "With regard to Palestine, which was not yet an independent State . ." *Permanent Mandates Commission, Minutes of the Tenth Session*, Geneva, 1926, p. 155.

future, as was the case in the Syrian Mandate (Article 1). In addition to this, the formulation of Article 123 of the Treaty of Sèvres and, later on, that of Article 30¹⁾ of the Treaty of Lausanne, were far from being clear and unequivocal. Thus it was possible for the Supreme Court of Palestine, when confronted, in January, 1924, with an extradition case, to go seriously into the question of the existence of a Palestinian nationality of its own; in view of the important problems of constitutional and international law involved, the Judicial Committee in London found it just and fitting to grant the right of appeal to the Privy Council against the judgment delivered by the Palestine Supreme Court which found that a Palestinian Citizenship did exist²⁾. In fact even prior to the promulgation of the Palestinian Citizenship Order of 1925, all doubts, which, at first glance, seemed perhaps justified, were totally unfounded; because Article 7 of the Palestine Mandate expressly provides for the acquisition of "*Palestinian Citizenship*".

In order to determine the nationality of the inhabitants resident in the territories detached from Turkey, certain provisions have been included in the Peace Treaty of Sèvres (Art. 30-36). The principles applied in these treaties do, on the whole, follow those along which the other treaties concluded in 1919-20 have been framed. It is not my intention to analyse these principles,

¹⁾ "Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory is transferred."

²⁾ See Norman Bentwich, *Nationality in Mandated Territories detached from Turkey*, in *The British Year Book of International Law*, London, 1926, p. 21.

but to consider here those provisions which have arisen from the decision to establish a „National Home for the Jewish People” in Palestine, and which are, consequently, of a specific nature.

Upon examining the treaties of Sèvres and Lausanne and comparing the same with each other, it can, at once, be established that whilst the former contained two Articles on Palestinian Citizenship, the latter makes no mention of them. It is of historical interest to discover the causes which led to the deletion of these two clauses; furthermore, the interpretation of these clauses would be of great assistance for a just appreciation of the Palestine Mandate and its particular position in the mandates system.

Article 129 of the Treaty of Sèvres provided that the “Jews of other than Turkish nationality who are habitually resident, on the coming into force of the present Treaty, within the boundaries of Palestine, as determined in accordance with Article 95, will *ipso facto* become citizens of Palestine to the exclusion of any other nationality.”

Even a cursory glance of this Article makes it evident that we have a case of a peculiar provision here, which essentially differs from the usual nationality provisions. It provided, namely, that not only former Turkish nationals resident in Palestine would *automatically* become Palestinian citizens (Art. 123 of the Treaty of Sèvres), but that the same would be the case of a certain category of foreigners, i.e. *all foreign Jews residing in Palestine*. Furthermore, the new Palestinian nationality shall be imposed on them to the *exclusion of their former nationality*; the Treaty did not even grant them the

option of retaining their former citizenship as was recognized by Article 124 of the Treaty concerning the retention of Turkish nationality by Turkish subjects.

Upon thorough examination of the reasons for this legally far-reaching provision, it is clear and obvious that those who worded and framed the text were essentially led by the nationalistic ideology, and that by the insertion of this Article in the Treaty, they wanted to uphold a principle which they considered well founded.

Palestine was recognized as the National Home for the Jewish People, and the automatic acquisition of Palestinian citizenship by all the Jews resident in Palestine on the coming into force of the Treaty appeared but a logical outcome of this recognition. Greater legal significance has been attributed to the fact that a man belonged to the Jewish people, whose right to re-establish its National Home in Palestine was recognized, than to the fact of his being a subject of any given State; the framers of Art. 129, in this case acting with commendable courage in the spirit of the "principle of nationalities" (*Nationalitätenprinzip*), did not hesitate to prescribe the annulment of the former nationality bond to be replaced by the new Palestinian Citizenship.

We know that this provision can no longer be found in the Treaty of Lausanne; but it would be erroneous to assume that this Article was deleted because of Turkish opposition or even because of any changes whatsoever having in the meantime taken place in the attitude of the Powers to the Palestine problem.

As stated by Mr. Norman Bentwich in his article on "Nationality in Mandated Territories detached from

Turkey¹⁾”, the French and English Jews resident in Palestine who did not want to lose their French or English nationalities approached their respective governments with a view to have Article 129 eliminated from the Treaty of Sèvres. As a result of this intervention, the projected text of the Article was modified in the subsequent negotiations with Turkey. This Article which became Article 35 of the draft treaty submitted on the 31st of January, 1923, to the Turkish delegation, read in its modified form as follows:—

“Jews of other than Turkish nationality who are habitually resident in Palestine on the coming into force of the present Treaty will have the right to become citizens of Palestine by making a declaration in such form and under such conditions as may be prescribed by law.”

The imposition of citizenship has been substituted by a right of option; a provision which, indeed, was not so “revolutionary” as that contained in Article 129, and yet sufficiently far-reaching in its consideration of the “principle of nationalities.”

No opposition was brought to bear on the part of the Turkish delegation, and in his letter from Angora dated February 4, 1923, addressed to the Presidents of the British, French and Italian Delegations, Ismet Pasha stated that Turkey fully accepted the proposed articles relating to the question of nationality.

It could, therefore, be expected that the said Article 35 would be adopted in the final text of the Treaty; but at the meeting of the Lausanne Conference on May 19, 1923, the French Delegation raised objections

¹⁾ *Ibid.*, p. 102.

to it. The French delegate, M. Bargeton, began by stating that, though the French delegation *was in principle not opposed to the Article*, it had, however, to formulate certain reservations. Firstly, the French Law did not permit the renouncing of French citizenship by means of a simple declaration as provided in the said Article; secondly, the French delegation could not agree to any distinction being made between French citizens on account of religion or other similar causes. M. Bargeton, therefore, requested that his remarks be taken into consideration in the final framing of the Article. It was thereupon decided to refer the question for reconsideration¹).

At the meeting of June 4, 1923, the British representative, Sir Horace Rumbold, after having recalled the doubts expressed by the French Delegation, stated that the British Delegation was prepared to discard the Article entirely. Ismet Pasha indicated his consent and thus the previous Article 129 of the Treaty of Sèvres, subsequently Article 35 of the draft Treaty of Lausanne, was definitely eliminated.

It is important to emphasize that although the Article was struck out by the Conference, there has never been any controversy regarding its intrinsic justification. The principles which formed the basis of this provision were not questioned by any of the delegates. It was therefore incumbent upon the Mandatory Power, when it came to the framing of the Palestinian Citizen-

¹) Conférence de Lausanne sur les affaires du Proche Orient (1922-1923), *Recueil des Actes de la Conférence*, Deuxième Série, Tome Ier, *Procès-Verbaux et Documents relatifs à la seconde partie de la Conférence*, (23 avril—24 juillet 1923), Paris, 1923, p. 23.

ship Order, to bear in mind the contents of this Article and its history.

If Article 129 of the Treaty of Sèvres was a logical outcome of Palestine being recognized as the National Home of the Jewish people, Article 125 of the Treaty was no less an expression of the same legal conception, although it manifested itself not in a positive but rather in a negative direction.

Article 125 made provision that:

“Persons over eighteen years of age habitually resident in territory detached from Turkey in accordance with the present Treaty and differing in race from the majority of the population of such territory shall within one year from the coming into force of the present Treaty be entitled to opt for Armenia, Azerbaijan, Georgia, Greece, the Hedjas, Mesopotamia, Syria, Bulgaria or Turkey, if the majority of the population of the State selected is of the same race as the person exercising the right to opt.”

This provision was inspired by the same ideology as Articles 85 and 91 of the Treaty of Versailles, Article 40 of the Treaty of Neuilly, Article 80 of St. Germain and Article 64 of Trianon.

It was the aim of these measures to make the nationality status of every person coincide with the ethnological membership of the nation or people to which he belonged. The option was intended here to serve the “principle of nationalities.”

The attentive reader has undoubtedly noticed that in Article 125 *Palestine was not mentioned* among the States for which the inhabitants of the territories detached from Turkey were entitled to opt. *No right to*

opt for Palestinian citizenship has been granted to Arabs living outside the boundaries of Palestine, although the majority of its population was Arab. The Arab majority was intentionally not recognized as a permanent and decisive factor, and *Palestine has* — with total disregard of this majority — *not been considered as an Arab country*. The recognition of “the historical connection of the Jewish people with Palestine and of the grounds for reconstituting their National Home in that country” brought the Peace Conference to the conclusion that Palestine was to be excluded from the list of States for which Arabs were entitled to opt.

Article 125 was replaced in the Treaty of Lausanne by Article 32 which contained some modifications of the original text. The term set for the exercise of the option was extended to two years and the option itself was made subject to the consent of the State for which one opted. Furthermore, Article 32 did not contain any enumeration of States. It was not advisable to retain the former list which mentioned also Armenia, Azerbaijan and Georgia; and it was, therefore, decided to abstain from any enumeration. A general form was preferred to the previous text:

“Persons over eighteen years of age, habitually resident in territory detached from Turkey in accordance with the present Treaty, and differing in race from the majority of the population of such territory, shall, within two years from the coming into force of the present Treaty, be entitled to opt for the nationality of one of the States in which the majority of the population is of the same race as the person exercising the right to opt, subject to the consent of the State.”

The reason why, in the new formulation of the Article, Palestine was not excluded from the category of States for which Arabs were entitled to opt, can be explained by the fact that it was probably believed that for Palestine this Article would not be of great practical value¹⁾ and perhaps also by the fact that the consent of the States in question was now made necessary for the exercise of the right to opt.

It will be seen from the above that the two provisions contained in the Treaty of Sèvres relating to the Jewish National Home in Palestine were not incorporated in the Treaty of Lausanne; we could also ascertain that their elimination at the Lausanne Conference *was in no way due to any objections raised against their Zionist contents*, or even against their intrinsic justification; the reasons were of a purely formal nature, emanating from quite a different source.

As is the case with all Peace Treaties, so also the Treaty with Turkey aimed only at the regulation of nationality of those inhabitants, who had any connection with the detached territories on the day of the Treaty's coming into force, or, in certain circumstances, with their majority populations; it did not concern itself with those who would, after that date, establish themselves in these territories.

The general theory is that in the present state of international law and relations, questions of nationality still belong, in principle, to those matters which are within the jurisdiction of every State, i.e. within its reserved domain. Each State is, accordingly, free to

¹⁾ It aimed, rather, at the right of option on the part of Greeks, Turks and Bulgarians.

decide upon the conditions under which it is willing to confer citizenship on aliens. This discretion can, however, be limited by international law.

The Permanent Court of International Justice, in its advisory opinion in the dispute between France and Great Britain as to the Nationality Decrees issued in Tunis and Morocco, said: "It is enough to observe that it may well come to pass that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law¹⁾."

Such a limitation is doubtless manifest in Article 7 of the Palestine Mandate. This Article had already been incorporated in the draft Mandate for Palestine of December 6, 1920, and has been taken over, without any change in its contents, in the final text of the Mandate as defined by the Council of the League of Nations on July 24, 1922, which reads as follows:

"The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews taking up their permanent residence in Palestine."

The interpretation of this provision does not present any difficulties. It imposes upon the Mandatory Power an international obligation to grant facilities for the acquisition of Palestinian citizenship to those Jews who

¹⁾ Cf. *Publications of the Permanent Court of International Justice*, Series B, No. 4, p. 24.

will take up permanent residence in Palestine, and *vice versa*, it recognizes their right to claim the nationality of this country. The obligation to facilitate the acquisition of Palestinian citizenship by Jews implicitly includes the obligation to naturalise them, that is, to confer upon them citizenship, upon their compliance with certain conditions laid down by law.

The naturalisation of Jews in Palestine should not, therefore, depend upon the discretion of the Palestine Administration. The Administration is not entitled to act as it pleases, and is only entitled to refuse an application for citizenship if and when the applicant fails to comply with the legal conditions required.

The recognition by public law of such a right of claiming a citizenship is, indeed, not entirely new, and is known to the legislation of various States¹⁾.

Georges Sauser-Hall in suggesting, *de lege ferenda*, this so-called "*naturalisation de faveur*")" (naturalisation by favour) for adoption in Switzerland, says: "The State will impose upon itself the obligation to grant to aliens, who will comply with certain conditions to be determined, the right to claim our nationality." "The State," he continues, "will refrain from using against the applicants its discretionary powers, which, in the case of ordinary naturalisation, entitles it arbitrarily either

1) For instance, in Bulgaria, Germany, France and Italy. See Magnus, *Tabellen zum Internationalen Recht*, Zweites Heft, *Staatsangehörigkeitsrecht*, Berlin, 1926, pp. 15, 33, 43, 59.

2) The French term of "*naturalisation de faveur*" is, perhaps, not an adequate one, as naturalisation in this instance is not an act of favour but a result of the recognition of the alien's right to citizenship. The Italians in this case use the expression "*per beneficio di leggi*" (benefit of the law).

to grant or to refuse the request of an applicant¹⁾.”

The fact that Article 7 of the Palestine Mandate provides facilities of naturalisation only for Jews proves that this provision was dictated by the concept of the Jewish National Home; the claim to citizenship of every Jew who returns to his Palestine homeland is a logical outcome of this principle.

Prof. Georges Scelle interpreted the Palestine Mandate in the same spirit when saying that “the Jewish immigration and the Palestinian naturalisation, essential conditions of a Home, must be free from every obstacle . . . on the part of the Mandatory Power²⁾.” Prof. Scelle goes even further in rightly inferring from the Palestine Mandate not only an obligation on the part of the Mandatory Power to grant Palestinian citizenship to the Jews returning to their Homeland, but an international obligation for *all* the States, members of the League of Nations, not to place any obstacles whatsoever in the path of their Jewish subjects who wish to acquire Palestinian nationality.

“Mais de plus”, writes indeed Prof. Scelle, “en l'espèce, il nous paraît que tous les États qui sont liés par les termes du Mandat (et ce sont, en principe, tous les États membres de la Société des Nations et même les États-Unis), s'étant engagés à reconnaître l'existence internationale du Foyer juif et par conséquent à faciliter son établissement, sont tenus par la-même de ne mettre aucun

¹⁾ Georges Sauser-Hall, *Le droit d'option, Les Mesures de Rétorsion d'États Étrangers*, Zürich, 1915, p. 3.

²⁾ Prof. Georges Scelle, *Les caractéristiques juridiques internationales du foyer national juif*, published in “Palestine”, Paris, 1928, vol. II, No. 8, p. 107.

obstacle à l'émigration de leurs ressortissants juifs, ni à leur changement de nationalité¹⁾.”

In analysing the Palestine Mandate, Schücking and Wehberg express the view that the Jews have been granted the right “to become subjects of their National Home within the boundaries of Palestine²⁾.” We cannot admit the existence of a special “Home-nationality” as Article 7 of the Mandate clearly provides for the “acquisition of *Palestinian citizenship*.” And if Schücking and Wehberg refer to Article 2 of the Mandate, in this connection, and believe that by this provision the “Jewish people living in Palestine has been recognized as such, for the purpose of establishing the Jewish National Home,” this conclusion seems to ignore the main issue. The *essential point* of Article 2, as well as of the Palestine Mandate in general, does not consist in the recognition of the Jews living in Palestine, but rather in the *recognition of the Jewish people throughout the world*, granting them a right, guaranteed by international law, to rebuild their National Home in Palestine. Moreover, this community, which at present does not possess a State of its own has been, by Article 4 of the Palestine Mandate, endowed with an appropriate representative organ; this article recognizes the Zionist Organisation as a “public body for the purpose of advising and co-operating with the Administration of Palestine” in all matters affecting the establishment of the National Home.

On the 1st of August, 1925, the Palestine Citizenship Order came into force. It is not the intention of

¹⁾ *Ibid.*, p. 107.

²⁾ W. Schücking and H. Wehberg, *Die Satzung des Völkerbundes*, Berlin, 1924, p. 696.

the author thoroughly to examine this legislation and analyse its various provisions in detail. I shall limit myself to a few remarks only.

First of all, it must be pointed out that in spite of a very clear provision contained in Article 7 of the Palestine Mandate, the Citizenship Order makes no mention in any of its Articles of any facilities for the Jews in the matter of the acquisition of Palestinian citizenship. This omission can be explained by the fact that the framers of the Order probably assumed that, as this legislation would ultimately apply almost exclusively to Jews, it would be superfluous to stipulate special privileges for them, and further that it would not be a violation of the Mandate if the few non-Jews, eventually desiring to become Palestinian citizens, were to enjoy the amenities of the law granted to the Jews. It is more than doubtful whether such a procedure was in principle correct. In any case, the decision not to incorporate any special provisions regarding the Jews in the Citizenship Order should logically have led the authors of the Order to frame *all* its articles in such a manner as to bring them into harmony with the rights granted to the Jews in the Mandate in connection with citizenship. This, however, is not the case with the Palestine Citizenship Order of 1925.

Article 7 (3) of the Order provides as follows:

“The grant of a certificate of naturalisation shall be in the absolute discretion of the High Commissioner, who may, with or without assigning any reason, give or withhold the certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision.”

This provision is undoubtedly inconsistent with the spirit and the letter of Article 7 of the Palestine Mandate.

We tried above to establish the true meaning of the said Article and we came to the conclusion that it confers upon Jews taking up their permanent residence in Palestine *the right to claim Palestinian Citizenship*. It is only through ignoring the international obligation therein assumed that the Mandatory Power made the granting of nationality dependent upon the discretion of the Administration. Article 7 (3) of the Palestine Citizenship Order must, therefore, be considered incompatible with the Mandate.

Not less contradictory to the contents and spirit of the Mandate is Article 10 (1) of the Order, which entitles the High Commissioner "subject to the approval of one of His Majesty's Principal Secretaries of State" to revoke a certificate of naturalisation. This clause of "denaturalisation" can, however, be applied to naturalised subjects only and not to former Turkish nationals who became automatically Palestinian citizens.

The fact that British representatives have often reiterated before the Permanent Mandates Commission during the discussion of the nationality question, that the Palestine Citizenship Order was framed on the model of the British Nationality and Status of Aliens Acts, reveals no real understanding of the foundations of the Palestinian Citizenship as laid down by international law. The naturalisation of an alien in the British Empire, a foreign State to him, cannot be compared to the acquisition of Palestinian citizenship by a member of the Jewish people, who is *re-establishing* himself in the country internationally recognized as his National Home. The British

representative Clauson, in his attempt to justify Article 10 (1) of the Order before the Mandates Commission¹⁾ by arguing that every Government is logically entitled to annul the naturalisation of a *foreigner*, only showed that he totally misinterpreted the meaning of the Palestine Mandate. *A Jew who returns to Palestine and claims Palestinian Citizenship is not an alien who immigrates to a foreign country.*

The Jews come to Palestine and become citizens of the country "*as of right and not on suffrance*".²⁾

¹⁾ Cf. *Permanent Mandates Commission, Minutes of the Ninth Session*, Geneva, 1926, p. 172.

²⁾ *British White Paper*, Cmd. 1700, *Palestine, Correspondence with the Palestine Arab Delegation and the Zionist Organisation*, 1922, p. 19.

THE PROBLEM OF THE LEGISLATIVE COUNCIL
BEFORE THE
PERMANENT MANDATES COMMISSION

August, 1934.

Within the next few days His Excellency, The High Commissioner for Palestine, Sir Arthur Grenfell Wauchope, is leaving for London to take up with the Colonial Office the question of establishing a Legislative Council in Palestine. It is to be presumed that the discussion will not be concerned with the principle whether or not the creation of self-governing institutions is desirable at present, but will rather deal with the details concerning the realisation of the project.

It seems that for the High Commissioner the problem of the establishment of a representative body in Palestine was long solved. In November 1932, he appeared before the Permanent Mandates Commission and declared that when the New Local Government Ordinance, which was at that time in the process of preparation, would be brought into working order, the Government would proceed with the formation of a Legislative Council as announced in the White Paper of 1930. At the same time he expressed the hope that the spirit of moderation would prevail and that the leaders of both sections of the population would agree to participate in the proposed body.

For all acquainted with the technique of the work of the Permanent Mandates Commission, the manner in which the above statement on the Legislative Council was made by the High Commissioner seems somewhat peculiar.

As Sir Arthur Wauchope was coming to the close of the general statement which he had been asked to make before the Commission prior to the discussions on the Report submitted to it, he was interrupted by the British member of the Commission, Lord Lugard, with a question concerning the Legislative Council. The statement therefore came in reply to the inquiry. The question now arises: Was not the declaration on the Legislative Council sufficiently important to be incorporated in the general statement, and if Sir Arthur Wauchope did not find it necessary to do so why could not Lord Lugard wait with his question until the end of the statement and then bring it up in the usual manner in the course of the general discussion.

This may be an insignificant detail and not worthy of any special attention, but it is perhaps not altogether lacking in interest. In any case the said incident does in no way weaken the absolute character of the declaration.

No less categorical was the statement on the Legislative Council made six months later, in May 1933, before the Mandates Commission by the British representative, Mr. M. A. Young, the then Chief Secretary to the Government of Palestine. In reply to the question put by Mr. Orts (Belgium) on the effect which the declaration, made by the High Commissioner in the previous year, had on the country, Mr. Young said that the statement was not new to the people of Palestine, as the intention of His Majesty's Government to set up a representative body had already been announced in a public document in 1930. The proposal had met with opposition on the part of some quarters and there was no unanimity on the subject but the Government maintained its announced policy.

The said declarations by the British accredited representatives before the Mandates Commission in 1932 and 1933, as well as certain steps recently taken by the High Commissioner, would seem to prove that the Mandatory Power has definitely decided to set up the projected representative body in the near future. Under the circumstances it is well worth stressing here the fact that the initiative came from the Mandatory itself and not from the Permanent Mandates Commission and the League of Nations.

The Mandates Commission during the last few years not only that it did not exercise any pressure on the Mandatory Power to proceed with the creation of a Legislative Council, but quite the contrary, the above project provoked earnest doubts and fears in the Commission, and even open opposition on the part of some members.

I shall not dwell at length upon the interpretation which the Permanent Mandates Commission gave to the provisions of the Palestine Mandate in its Extraordinary Session of June 1930, in which it also formulated its view regarding the establishment of a Legislative Council. I will only summarise here two principles laid down in its observations. The Mandates Commission insisted that a distinction must be made between two entirely different matters which are much too often confused:

- (1) The *objects* of the Mandate, and
- (2) The *immediate obligations* of the Mandatory.

The establishment of "self-governing institutions" is one of the ultimate objects of the Mandate. The Mandate fixes no time limit for the accomplishment of this object, so that it would be unfair to complain against

the Mandatory for the reason of Palestine not yet having been granted a regime of self-government. A second principle was laid down by the Commission, viz.: the leaders of those sections of the population which rebel against the Mandate will find no encouragement in the Mandates Commission, and the Mandatory Power must obviously give them a definite and categorical refusal as long as they persist in repudiating what is at once the fundamental charter of the country and, as far as the Mandatory Power is concerned, an international obligation which it is not free to set aside. Any negotiations with them, it goes on to state, would only unduly enhance their prestige and raise dangerous hopes amongst their partisans and apprehensions amongst their opponents.

In its 20th session of 1931, the problem of a Legislative Council was tabled again. The British representative, Dr. T. Drummond Shiels, confirmed the policy declared by the Mandatory Power concerning the establishment of self-governing institutions, on the basis of the White Paper of June 1922. The only member of the Commission who reacted to this was the Vice-Chairman, M. Van Rees (Holland). He emphasized the fact that the projected Council would no doubt have the right of initiative in all matters of legislation, and would, therefore, be able to propose legislation incompatible with the terms of the Mandate. It is true that the High Commissioner or His Majesty will have a right to prevent the coming into force of any Ordinance contrary to the Mandate, but such a repressive weapon could only be used in extreme cases—that is to say, very rarely, on pain of provoking undesirable conflicts. Van Rees referred also to the Passfield White Paper of 1930 as a

striking' example of how difficult it sometimes is to decide whether or not an Ordinance scrupulously respects the provisions of the Mandate. Hence, he continued, in so far as the Council might proceed to legislate on questions relating to the Mandate, the number of cases revealing a divergence of views between the majority of the Council and the High Commissioner might prove to be very considerable, a position which would involve consequences ill-calculated to promote that understanding between the different elements of the population, which the Government still hoped might one day come to pass.

To these remarks and fears expressed by M. Van Rees, Dr. Shiels briefly replied that the veto was a very difficult weapon, which could only be used sparingly, because of its effect on local feeling. When elaborating the new Order-in-Council before the Legislative Council was set up, he continued, the points raised by M. Van Rees would certainly be taken into consideration.

Although the question of a Legislative Council was only briefly touched upon at the 1931 session, and, as far as that was done, it was rather in a *negative spirit*, the Report submitted to the Council of the League contained an observation which said that "the Commission welcomed the statement by the accredited representative that the Mandatory Power . . . intended to set up a Legislative Council". This conclusion is more than surprising and it is indeed difficult to understand how it came to be included. It can therefore be well understood that the Vice-Chairman of the Commission, M. Van Rees himself, declared a year later that the statement that the Commission "welcomed" the declaration was *contradicted*

rather than confirmed by the minutes of the 20th session, and that not too much importance could be attached to it.

If, as we have seen, the problem of the Legislative Council was only briefly considered in 1931, it was, however, the object of long and thorough examination at the 22nd session in 1932. At this last session Sir Arthur Wauchope made the aforementioned statement. Even at those meetings at which the High Commissioner was present, certain members of the Commission expressed their doubts whether the creation of the Legislative Council immediately after the application of the new Local Government Bill might not be a little premature ; would it not be wiser to wait and see how the new law worked before appointing the Council, and was it not likely that the institution of a representative body at an inopportune moment would reawaken all the political passions and all the ambitions which should better be left unaroused.

When the Mandates Commission was about to formulate its *general observations* for submission to the League Council, the question arose as to whether the High Commissioner's declaration should or should not be specially mentioned therein. The draft observations, probably prepared by the Mandates Section of the Secretariat of the League, included a paragraph on this question, but after lengthy discussions and "careful reflection," as one of the members afterwards put it, the Commission decided that *it was inopportune to retain it*. It is to be regretted that the minutes of the session do not contain a summary of the discussions on this point. The fact, however, remains that the Mandates Commission adopted

the view that it was preferable not to make any allusion to the High Commissioner's declaration regarding the creation of a Legislative Council; and it is obvious that it intended thereby to indicate to the Mandatory Power its realisation of the difficulties and dangers connected with the project and that it could not, on its part, bring any pressure to bear upon the Mandatory to set up a Legislative Council at an early date.

Unfortunately this decision of the Commission, the importance of which is clear and obvious, was short-lived. A few days later the question was raised again before the Commission, on the occasion of the petition submitted by the Palestine Arab Women Congress, in which they claimed, *inter alia*, the establishment of self-government.

M. Pallacios (Spain) suggested that since the Commission, in its *general* observations, had decided to pass over in absolute silence the very important announcement made by the High Commissioner, it would be appropriate, at least in the *special* conclusions regarding the petition, to state that according to the declaration of the High Commissioner the British Government was about to proceed with the establishment of a representative body. The rapporteur on the petition, Professor Rappard, strongly objected to this suggestion. He said that he could not supplement the conclusions on the petition prepared by him in the manner proposed by M. Pallacios as the Palestine Arab Women claimed self-government in order to obtain the abrogation of the Balfour Declaration, the abolition of the Mandate and the establishment of a national government with a view to attaining complete independence within an Arab Federation.

After an exchange of views the Commission decided

not to insert any paragraph concerning the Legislative Council in the *special* conclusions, but at the same time the question, whether it was nevertheless not appropriate to mention the High Commissioner's declaration in the *general* observations, again came up. Long and earnest discussion arose around the question whether or not the declaration was to be alluded to, and under cover of these discussions on this formal point there was the real and true attitude of the members of the Commission to the execution of the project under the existing circumstances.

M. Van Rees pointed to the danger involved in creating a representative body in Palestine before the conditions in that country made it feasible. Such a step would be an "unfortunate mistake" and opposed to the interest of Palestine; it would lead to disillusionment and harm the efforts to bring the Arabs and Jews to a long desired agreement. He therefore declared himself strongly opposed to any allusion to the High Commissioner's declaration so as not to give the impression that the Mandates Commission was anxious and impatient to see a Legislative Council set up as soon as possible. M. Van Rees' opinion was shared by Professor Rappard, Orts, Merlin and Ruppel.

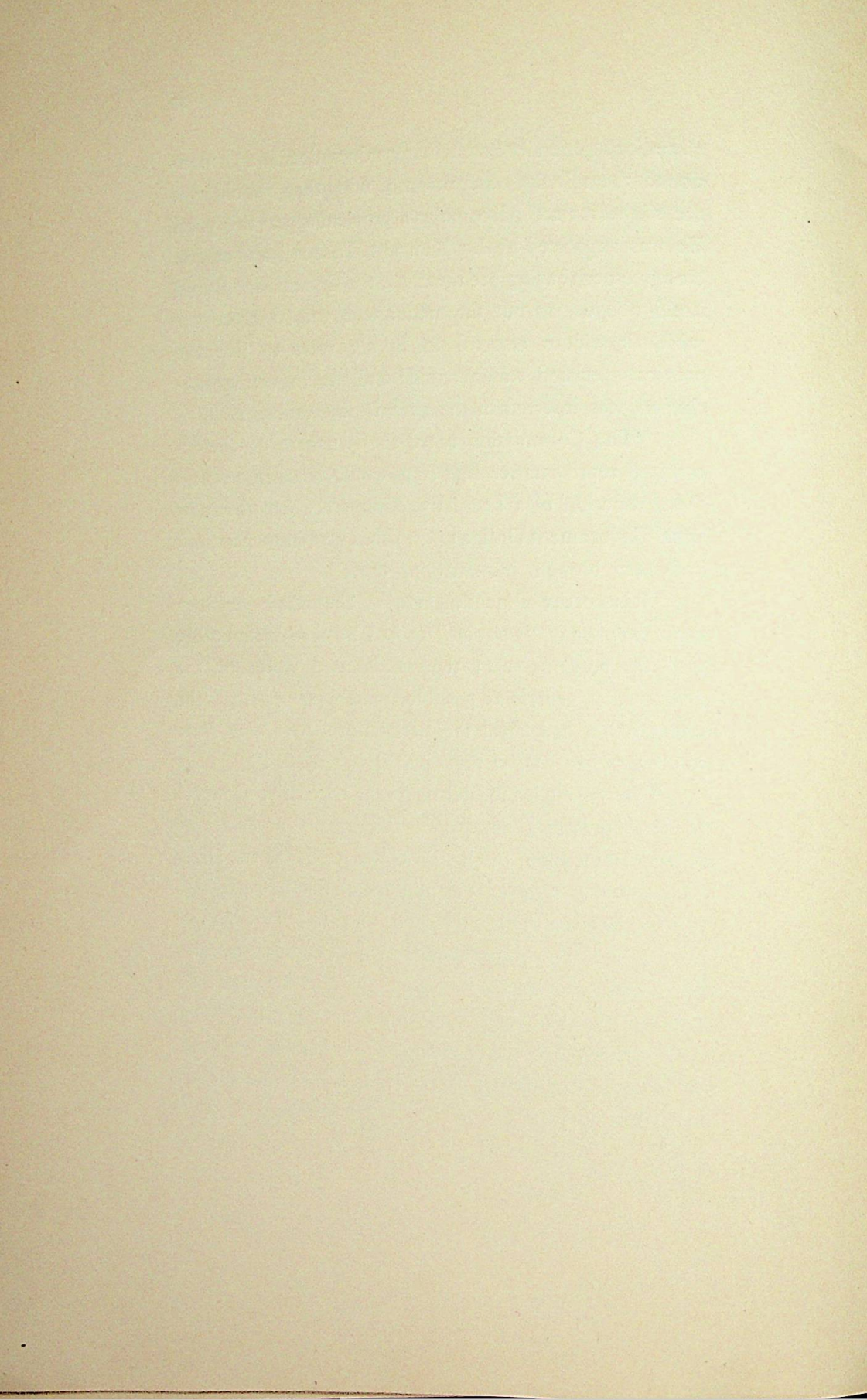
M. Pallacios, on the other hand, pointed out that the claim for self-governing institutions was provided for by Article 2 of the Palestine Mandate, and it was the duty of the Commission to see that due respect be given to the provisions contained in the Mandate in favour of the Arabs. He added that his proposal could hardly be more moderate: it merely consisted of a benevolent mention of an important announcement made by the High Commissioner. The Commission, when examining an admi-

nistration, generally noted many minor details and mentioned them in its observations; why then should not the slightest trace of so major a problem appear this year. He was supported by Lord Lugard, Theodoli and others. No agreement having been reached, the Commission found itself obliged to put the matter to a vote, a procedure which it seldom resorted to. By six votes to five the previous decision was overruled and the following conclusion was inserted in the *general* observations :

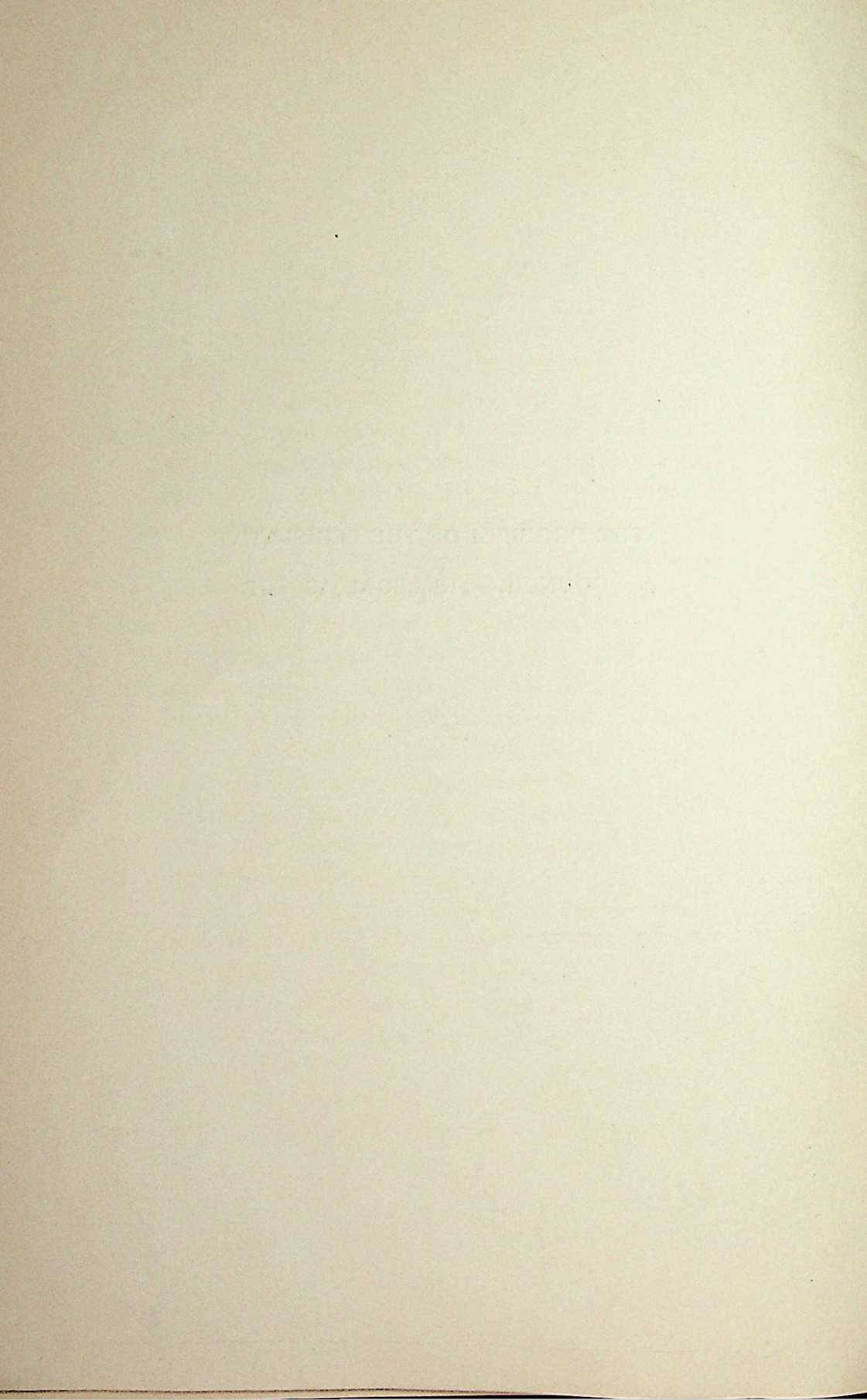
“The Commission noted the statement of the accredited representative that steps would be taken towards the formation of a Legislative Council when the new Local Government Ordinance, which is now in preparation, had been brought into working order”.

It is worthy of mention here that the text adopted does not express any “welcome” as had been so inexplicably used the previous year; the words used were, on the contrary, as general as possible, merely saying that the Commission had heard the declaration, *refraining from expressing any opinion* regarding it.

Thus concluded the debate on the Legislative Council in the Mandates Commission. Besides the observations of the Commission, the British Government and the High Commissioner received the minutes of the deliberations. They were given thereby the opportunity to learn what the attitude of almost every member of the Commission was; they were also in a position to note the opinions of such men as Van Rees, Rappard, Orts and others who were strongly opposed to any premature steps and warned the British Government against any hasty action in this connection.



**THE PROBLEM OF THE LEGISLATIVE
COUNCIL — ITS LEGAL ASPECT**



March, 1936.

I.

Like every other phenomenon in public life, the problem of the Legislative Council can be considered from two points of view — the political and the juridical. In this article very little attention is given to the political motives and arguments which lead to a negative attitude to this project; I rather intend to treat the question from a purely legal standpoint and to analyse the controversy aroused by it in a juridical manner.

In response to the numerous criticisms expressed on different sides against the establishment of a representative body in Palestine at the present moment, the answer of the British Government is approximately as follows: There is nothing novel about the project of a Legislative Council; it dates back to the year 1922, at which time it was accepted by the Jews; in the White Paper of 1930 the British Government formally pledged itself to set up such a body, and in 1932 the High Commissioner, with the approval of the Government, informed the Permanent Mandates Commission at Geneva that the intention of the Government in this respect remained unchanged. Pledges must be carried out. "Even if there were grounds for regarding the introduction of a Legislative Council as a disturbing factor", said J. H. Thomas, Secretary of State for the Colonies, in his letter to Lord Melchett (February 20, 1936), "the failure of the Government to fulfil its pledges at the earliest practicable time

would be a factor still more likely to be disturbing to good order and one which might be expected to create a feeling of widespread mistrust”.

The arguments of the British Government, though essentially logical and weighty, are, nevertheless, scarcely convincing from a legal point of view; for as far as the juridical analysis goes, the question is not whether the British Government has committed itself in any definite manner, but whether, in the political situation at present existing in Palestine, it is *obliged* by the Mandate to establish a Legislative Council. Furthermore, was it at all entitled by the Mandate to promise the introduction of a representative body and, in fact, does not such a promise altogether contradict the Mandate?

The Parliamentary Under-Secretary for the Colonies, the Earl of Plymouth, participating in the debate on the Council in the House of Lords, on February 26, 1936, summed up the attitude of the Government in this question by asserting that there was nothing in the projected Legislative Council “contrary to the Mandate, either in the letter or in the spirit”. He based his argument upon Article 2 of the Mandate which reads as follows: “The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish National Home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion”.

There is a general tendency to interpret this article as if it expressed *two different aims* of the Mandate: the

first, the establishment of the Jewish National Home and the second, the development of self-governing institutions. The *first* provision is considered to be *in favour of the Jews* and the *second in favour of the Arabs*. Thus one arrives at a *dual rather than a single and unified* conception of the Mandate.

This construction of the terms of Article 2 seems also to have been adopted by the Permanent Mandates Commission in its Report to the Council of the League in 1930, although, as the minutes of its seventeenth session show, some of the members of the Commission expressed different and divergent views on the matter. For example, the Chairman, Marquis Theodoli, insisted that the chief aim of the Palestine Mandate is the development of self-governing institutions and that "the establishment of the National Home for the Jews must be made compatible with the introduction of autonomous institutions". Professor Rappard, on the other hand, declared that "the Mandatory must set up self-governing institutions in so far as their establishment was compatible with the establishment of the National Home for the Jews" and that, therefore, as long as the Arabs opposed the provision regarding the National Home they could not profit from the provision relating to self-governing institutions.

It was the British Government, in its Comments on the Report of the Permanent Mandates Commission, that officially objected to the interpretation of Art. 2 adopted by the latter; the British Government reproached the Commission that it had utterly forgotten the *last provision* of the Article, the one dealing with the safeguarding of the "civil and religious rights of

all the inhabitants of Palestine, irrespective of race and religion". The Government, in fact, went so far as to say that in its opinion the third provision contained the core of the matter¹).

Although these comments cannot but be considered too far-reaching and exaggerated, it must be admitted that the British Government was justified in insisting that in analysing Article 2 one had no right to ignore the third provision which is concerned with the civil and religious rights of all the inhabitants of Palestine.

And, indeed, a thorough and profound study of Art. 2 of the Mandate leads to the conclusion that precisely that last provision,—and not, as it is generally thought, the second, dealing with self-governing institutions,—was inserted by the framers of the Mandate to protect the rights of the Arab population.

Article 2 does not stipulate *two independent and equal objects* of the Mandate; it sets forth *only one aim*—the establishment of the Jewish National Home. The development of self-governing institutions is not antithetical to the establishment of the National Home; it is, on the contrary, an integral and organic part of the process of its realisation, and must therefore be effected only in so far as it is in harmony with, and of aid to, the upbuilding of the homeland.

With regard to the Arab population Article 2 contains the general reservation of the Mandate, namely that their civil and religious rights shall be safeguarded. It is, moreover, totally irrelevant that this Article speaks of "all the inhabitants" of the country rather than specifically of the

¹) Cf. *Permanent Mandates Commission, Minutes of the Seventeenth (Extraordinary) Session, Geneva, 1930, p. 149.*

“non-Jewish communities”, or “other sections of the population” — terms employed in other corresponding articles. Here as in those articles, only civil and religious, and *not political*, rights are guaranteed. Indeed, the Privy Council in its judgment in the Urtas Spring case authoritatively stated that the “key to the true purpose and meaning” of the last provision of Art. 2 of the Mandate “is to be found” in its “concluding words: irrespective of race and religion”, and that “the purpose of the article is to secure that in fulfilling the duty which is incumbent upon every Government to safeguard the rights from time to time belonging to the inhabitants of the territory the Mandatory shall not discriminate in favour of persons of any one religion or race”.

It is worthy of note here that at one time the Permanent Mandates Commission itself was apparently convinced that the Palestine Mandate had only a single aim — i. e. the establishment of the Jewish National Home.

In the Questionnaire framed in 1922 to assist the Mandatory Power in the preparation of the annual reports, the various questions to be answered were enumerated, and were grouped under a number of headings each of which represented an important problem. For example, we find the “Jewish National Home”, “Autonomous Administration”, “Land Regime”, “Judicial System”, “Economic Equality”, “International Conventions”, etc. There is *no heading* for the question of self-governing institutions; it was accorded only a minor position as *one of the sub-headings* in connection with the topic of the Jewish National Home. It was, therefore, considered as a means to an end, rather than an end in itself.

The correctness of the interpretation of Article 2 advanced by us becomes even clearer when we read the Article in its context in the Mandate and compare it with the corresponding article in the Mandate for Syria and the Lebanon or with that in the projected Mandate for Mesopotamia (Iraq). It is important to remember that the texts of all these mandates were prepared at the same time and by the same experts.

Article 1 of the Palestine Mandate expressly provides that "the Mandatory shall have full powers of legislation and of administration...". It does not stipulate, as does the Syrian Mandate and the one drafted for Mesopotamia, that within a period of three years the Mandatory shall frame "an organic law" and "enact measures to facilitate the progressive development" of the mandated territories as "independent States".

Even the article on local autonomy is couched in very guarded terms in the Palestine mandate (from which it seems to have been taken over into the Syrian Mandate): "The Mandatory shall, *so far as circumstances permit*, encourage local autonomy".

Pursuing the same line of thought, one might point to a number of other articles in the Palestine Mandate — especially Art. 4 regarding the Jewish Agency and the fundamental principles laid down in the Preamble; the analysis of these articles and principles would, however, lead us too far afield. We shall limit ourselves to an investigation of the history of Article 2, for the preparatory work done on it furnishes us with further proof of the correctness of our interpretation.

II.

If we wish to employ the historical method of interpretation in determining the exact meaning of Article 2 of the Palestine Mandate, we must accept as our primary assumption the fact that the source of Art. 2 is Article 5 (I) of the "Proposals" officially presented by the Zionist Organisation to the Peace Conference on February 27, 1919. The contents of Article 5 (I) read as follows: "Palestine shall be placed under such political, administrative and economic conditions as will secure the establishment there of the Jewish National Home, and ultimately render possible the creation of an autonomous Commonwealth, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country"¹).

Comparing the two texts, we see at once that the only important change introduced by the framers of the Mandate is the substitution of the words "and (secure) the development of self-governing institutions" for the phrase "and ultimately render possible the creation of an autonomous Commonwealth". This change was first introduced by the British Government in its draft of June 10, 1920. In the two previous tentative drafts of July 1919 and of the winter of that year the text of the Zionist "Proposals" had appeared with only one slight change, namely the use of the word "self-governing" for "autonomous".

In formulating their claims with regard to the wording

¹) See *Zionism during the War, A Record of Zionist Political Activity, 1914-1921*, published by the Zionist Organisation, London, 1921, p. 68.

of the Mandate, the Zionist leaders considered it desirable and important that the Mandate make reference to the development of a "Jewish Commonwealth" as the outcome of the Jewish National Home, — or at least, if that phrasing were unacceptable, of a "self-governing Commonwealth". The stress laid by the Zionist leaders on the necessity for far-reaching autonomy, found expression also in Art. 5 (III) of their "Proposals", where they demanded "the widest measure of self-government for localities practicable in the conditions of the country".

The British Government did not think it possible to concede to these demands. The reason for this attitude was, in all probability, the feeling that too explicit a statement on the development of Palestine into a self-governing Commonwealth would be premature and would render its task as Mandatory more difficult. The British Government, on the other hand, could not entirely ignore the wishes of the Zionist leaders, particularly since they fought so vigorously for the adoption of their view. It was due to their efforts, for example, that in November, 1920, the Parliamentary Group for Palestinian affairs, headed by Lord Cecil, passed a resolution which urged the Government to include in the terms of the Mandate "the policy of the development of Palestine into a Palestinian self-governing Commonwealth".

The British Government finally adopted a compromising attitude as a result of which Art. 2 refers not to an "autonomous" or "self-governing Commonwealth" but merely to the "*development of self-governing institutions*".¹⁾ The same restrictive tendency manifested

¹⁾ For the history of the negotiations on the Palestine Mandate see *ibid.*, pp. 27-33.

itself in the change later introduced by the Government into the article regarding local autonomy. The draft of 1920 speaks of the “*whole* measure of self-government for localities” and the draft of 1921 of the “*widest* measure...”, but both those terms — “whole” and “widest”—disappeared in the final text.

The brief history of Article 2 just given shows clearly that in introducing the words “the development of self-governing institutions” the framers of the Mandate had only one object in mind: to satisfy, at least partially, the Zionist desire for the future development of the Jewish National Home into a self-governing Commonwealth. The words were by no means intended to protect any rights of the Arab population.

Research into the history of Art. 2 therefore confirms the conclusion to which the logical or teleological interpretation of it has already led us: that self-governing institutions do not figure in the Palestine Mandate as an aim in themselves, antithetical to the Jewish National Home; that they must, accordingly, be introduced and developed within the limits of the National Home and only in so far as they do not impede or aggravate the process of its growth.

In connection with this, it is perhaps important to note that reference to preparatory work on an international treaty or international legislative act is one of the methods of interpretation admitted by International Law; the Permanent Court of International Justice itself has often employed this method in issuing judgments and formulating advisory opinions¹⁾.

¹⁾ For further details see my book on *La Juridiction de la Cour Permanente de Justice Internationale dans le système des Mandats*, Paris, 1930, pp. 178-188.

It is clear even to a superficial observer of the situation in Palestine that in view of the present attitude of the Arab leaders to Zionism, the establishment of a Legislative Council would serve as a tremendous obstacle to the development of the Jewish National Home¹). Every attempt to set up a representative body at this time must be considered not only inconsistent with the spirit of the Mandate but also a clear contradiction to the letter and the spirit of Article 2.

Even opponents of Zionism have been compelled, after a fair analysis of the situation, to admit the truth of this assumption. We find, for instance, that Captain C. D. Brunton, in writing an article on the British policy in Palestine, where he manifests little sympathy for the Zionist movement, says as follows: "We see, therefore, that the Mandate encourages the development of self-governing institutions, directs certain measures to be taken to *secure* the establishment of a National Home for the Jews, and finally provides for a time when the *administration* of Palestine will be superseded by a *Government* of Palestine. But the self-government which is envisaged in the Mandate cannot be that of the population of Palestine as at present constituted with its large Arab majority, for, if it were, articles 4, 6, 7, 11, 22 and 23 would not be accepted, at least in their present form, by such a Government. The self-governing institutions and future Government of Palestine referred to in the Mandate must therefore be based upon a population of different composition from the present one"; by this last phrase the

¹) Note that this article was written *before* the disturbances which started in April 1936 and which should open the eyes even of those who failed to appreciate the reality.

author means the constant growth of the Jewish population due to the increasing immigration of Jews¹).

There is another argument raised by those anxious to justify the establishment of a representative body in Palestine, and it is important to deal briefly with it here.

Arab leaders often claim (as, for example, before the Shaw Commission) that Article 22, paragraph 4, of the League Covenant entitles them to a certain measure of self-government. This paragraph, they assert, states that Palestine has already "reached a stage of development where its existence as an independent nation can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as it is able to stand alone". They further claim that failure to introduce self-governing institutions is a flagrant violation of the Covenant. Upon a careful examination of this claim, it, too, proves to be unfounded.

Article 22, Paragraph 4, of the Covenant speaks of "certain" communities formerly belonging to the Turkish Empire" and does not exactly specify which Near Eastern territories are thereby meant. While the Preamble of the Syrian Mandate (as also that of the projected text of the Mesopotamian Mandate) expressly declares that the Mandate is framed "in accordance with the provisions of Article 22 (paragraph 4) of the Covenant", the preamble of the Palestinian Mandate merely states that it was drawn up "for the purpose of giving effect to the provisions of Article 22 of the Covenant". In the latter case, then, Paragraph 4 is not referred to as the basis of the Mandate, just as it was not mentioned in Article 95 of the Treaty of Sèvres with

¹) C. D. Brunton, *British Policy and the Palestine Mandate*, in "English Review", November 1929, pp. 575-581.

Turkey¹). Inasmuch as the same experts prepared the texts of the three Mandates, the omission in the Palestine Mandate is undoubtedly not accidental. It results from the letter of the British Government, dated March 1, 1922, to the Arab delegation, that it was because of the Jewish National Home that Paragraph 4 was not mentioned in the Mandate².)

Since at the time when the Palestine Mandate was framed, reference to Par. 4 of Art. 22 of the Covenant was intentionally omitted, it is clear that *the Paragraph does not apply in this case.*

The question has, however, been raised in this connection: Do not the contents of Par. 4 prescribe its application to the Palestine Mandate and does not, therefore, its failure to be applied constitute a violation of the said Paragraph?

We have seen that Palestine is not mentioned by name in Paragraph 4. That Paragraph relates only to "certain communities formerly belonging to the Turkish Empire", — *certain* but not *all* communities. Paragraphs 5 and 6 of Article 22 of the Covenant also contain no exhaustive enumeration; they merely give instances. Indeed, Par. 5 speaks of "other peoples, *especially those*

¹) Nor has Paragraph 4 been mentioned in the preamble of the American-British Palestine Mandate Convention of December 3, 1924; the second section of the preamble reads as follows: "Whereas Article 22 of the Covenant of the League of Nations in the Treaty of Versailles provides that in the case of certain territories which, as a consequence of the late war, ceased to be under the sovereignty of the States which formerly governed them, mandates should be issued, and that the terms of the mandate should be explicitly defined in each case by the Council of the League".

²) See *British White Paper*, Cmd. 1700, 1922, pp. 5—6.

of Central Africa", and Par. 6 of "territories, *such as South-West Africa etc*".

The text of Paragraph 4, then, does in no way prescribe that the Palestine Mandate should at all be framed in conformity with its provisions. Furthermore, the wording of Paragraph 4 and also of Paragraphs 5 and 6 of Art. 22 lead to the conclusion that, in general, it is not absolutely necessary that the text of a Mandate *be drafted in accordance with one of the three types of mandates* there set forth. On the contrary, it is quite possible for one and the same mandate to *contain elements taken from all three* and yet to *fall within no single category*. It is only fundamentally important that the Mandate should not contradict the Article *as a whole*.

Lord Balfour was, therefore, quite right when, in submitting the Palestine Mandate to the League Council for confirmation, he wrote in his letter of December 6, 1920, that the terms of the Mandate have been prepared "in conformity with the spirit of Article 22 of the Covenant".

Article 22 is primarily concerned with the task of preventing the territories conquered in the War from being distributed among certain nations in accordance with the old principle of annexation and imperialistic interest. The mandates system was the means adopted to bring about this end. And if international justice and historical equity induced the Peace Conference to recognize the right of the Jewish people to reconstitute its National Home in Palestine,—this recognition was certainly not in contradiction to the meaning of Article 22, or, in general, to the spirit of the New World then aspired to. A few weeks after the acceptance of Art. 22

by the Conference, President Wilson, the author himself, solemnly told a Jewish delegation that in Palestine would be laid "the foundations of a Jewish Commonwealth".

That this and none other was the true meaning of Article 22 of the Covenant of the League of Nations is confirmed by the following fact. According to the decision of the Supreme Council of May 6, 1919, Great Britain was entrusted with the mandate over the former German East Africa, which included also the small territory of Kionga. The Portuguese Government strongly protested against this decision and claimed the recognition of Portugal's right of ownership over the said area. She relied for her claim upon the fact that Kionga was occupied by Germany, in 1894, by an act of violence, that the Portuguese people have never resigned themselves to this loss and that it would be only right and just to reincorporate Kionga into the Portuguese colony of Mozambique of which it was detached by force. The Supreme Council referred the question to its special Commission on mandates, and on the strength of its recommendation it decided, on the 10th September, 1919, to annul its former decision and to recognize Portugal as the "original and legitimate proprietor of this part of the former German colony of East Africa".

We see, therefore,—and, as matter of principle, it is of no importance whether the area in question was large or small—that the Peace Conference did not hesitate to restitute the territory of Kionga, *already placed under the mandatory regime*, to Portugal and to recognize its sovereign rights over it. The Peace Conference did not find that in so doing it violated Article 22 of the

Covenant, whereby former German colonies were to be put under a mandatory administration. For, what Article 22 wished to prevent was only the unjustified annexation of territories in the spirit of old imperialism. In this case, however, the reincorporation of Kionga to Portugal was considered by the arbiters of the world to be an act of justice and reparation, and they acted accordingly.

Finally, there is another point which calls for attention.

Since the establishment of the League of Nations, the three mandates relating to the Near East have been grouped into a single category as A Mandates. This fact, however, cannot serve as proof that Paragraph 4 of Article 22 applies to Palestine as well. In Mr. Hymans' famous report on the mandates adopted by the Council of the League at San Sebastian on August 5, 1920, it is expressly stated that "the terms of the Mandates according to which the Mandatory Powers should exercise their government must be especially defined in distinct charters applicable to each Mandatory area" and "that the definition of these terms... would necessarily *vary according to the nature of the territory* or the people who are to come under the Mandates". The report also urges that as regards the A Mandates "it would be right to adopt administrative regimes which will vary according to the degree of civilisation of the peoples concerned, and even according to the principles and systems of government of the respective Mandatory Powers". The fact that the Palestine Mandate is included among the A Mandates should not, therefore, be considered especially relevant in the determination of its juridical status in the mandates system.

In protesting against the Palestine Mandate, the Arab leaders themselves have more than once openly admitted that it was drawn up in such a way that Par. 4 of Art. 22 does not apply to it. For example, the memorandum submitted by them in April, 1921, to Mr. Winston Churchill, Colonial Secretary at that time, explicitly states that they do not know to what category the Palestine Mandate belongs, and that, in any case, it does not, by the nature of its contents, belong to category A.¹⁾

In this respect, they were perfectly right, for, as a matter of fact, neither Paragraph 4 nor Paragraphs 5 and 6 of Article 22 apply to the Palestine Mandate; the Palestine Mandate is unique both in contents and character, a *mandate sui generis* framed in full accordance with the meaning of Article 22 *as a whole*.

It should be clear from the above explanations that all the arguments raised in justification of the introduction of a Legislative Council in Palestine at the present time, by reference to Article 2 of the Mandate or Article 22 of the Covenant, have no sound basis and are juridically unfounded.

¹⁾ See *Société des Nations, Journal Officiel*, No. 4, Juin 1921, p. 339.

THE FUNCTIONS OF THE PERMANENT COURT
OF INTERNATIONAL JUSTICE IN THE
MANDATES SYSTEM

August, 1936

I.

It is an accepted truth that the most important element in the mandates system, as established at the Peace Conference and subsisting until today, is the constant and thorough supervision over the mandatory powers by the League of Nations, as well as the setting up for this purpose of a Permanent Mandates Commission to act as an advisory body of independent experts. The ultimate control is in the hands of the Council of the League, and every mandatory power is, by Article 22 of the Covenant, under an obligation to submit to the League of Nations annual reports on the administration of the mandated territories committed to its charge. Later on, the right was conferred upon the inhabitants of the mandated territories as well as upon every individual or group, wheresoever they may be, to apply to the League by way of petitions.

It goes without saying that the efficacy of this supervision depends upon the general political situation of the world and the place occupied by the League therein. The influence of the Mandates Commission ebbs and flows with the strength or weakness of the League itself.

It would, however, be erroneous to believe that the League of Nations together with the Mandates Commission are the only controlling bodies provided by the mandates system. There are cases when application may

be made to the Permanent Court of International Justice to settle matters concerning the mandates.

In this article I shall attempt to throw light on the place assigned to the Permanent Court of International Justice in the mandates system and to determine its function therein.

It may, first of all, be pointed out that every mandate contains a provision (in the Palestine Mandate it is article 26) that if any dispute whatsoever should arise between the mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice. A right has expressly been conferred upon every member of the League to institute proceedings against the mandatory at his own instance, i. e. "unilateral arraignment", and thereby to force the mandatory to submit to the jurisdiction of the Court.

In this respect the above provision is perfectly clear. Doubts may, however, arise as to the limits within which this right of access to the Court may be exercised: Was this right intended to be used by the members of the League only when the protection of their own or their subjects' interests were affected, or is it a general right which may be used even where they have no direct interest in the dispute?

The Greek Government, for instance, has twice instituted proceedings against the British Government as Mandatory for Palestine, for alleged wrongful acts against a Greek National, Mavrommatis, in matters connected with the Rutenberg concession. These cases were found

to be strictly in conformity with the above provision, but the question may arise whether the Greek Government would also be entitled to bring a suit against the British Government if, for instance, the latter committed any wrongful act against the native inhabitants of Tanganyika.

In my book "The Jurisdiction of the Permanent Court of International Justice in the Mandates System" the answer I gave to this question was in the negative. It cannot be assumed that the authors of the provision regarding the jurisdiction of the Court intended it to go so far as to confer upon every individual member of the League an independent right of control of the application of the mandates generally, since this last task was, by the mandates system, assigned to the Council of the League and its Permanent Mandates Commission. It may, therefore, be said that the extent of this provision was meant to be more modest; it provided that a State which felt itself *wronged in its own interests or in those of its nationals*, should be in the position to refer the dispute to the Court, the judgment of which shall be final and conclusive.

Except for the Mavrommatis cases, the Court had no opportunity of dealing with matters connected with mandates. It may be mentioned here that during the discussions at the meeting of the Mandates Commission, in 1929, on the question whether the Palestine Administration, when granting the Dead Sea concession, did or did not act in conformity with the principle of economic equality, certain members of the Commission (the late Van Rees and Professor Rappard) remarked that if Articles 11 and 18 of the Palestine Mandate were not sufficiently clear,

every member of the League was entitled to refer the matter of controversy for the judgment of the Court.

If the above interpretation is true as regards all mandates, that of Palestine deserves special consideration. The aim of the Palestine Mandate is to re-establish the National Home for a people dispersed throughout the world. Should the Mandatory Power act contrary to any provision of the Palestine Mandate stipulated in favour of the Arab population, no member of the League may, as we have seen, institute on their behalf any proceedings before the Court. But what would the ruling be in the event of a violation of a stipulation in favour of the Jewish National Home? Would not a State, possessing a large Jewish population, be justified in saying that when applying to the Court in matters connected with the Jewish National Home it acted on behalf of its Jewish citizens to whom, as Jews, the right to a National Home had been granted? Cannot such a State in so doing claim to protect the interests of its own nationals?

It is generally very difficult precisely to define the meaning of the term "interest", and to determine the cases in which a State can rely upon it for the purpose of instituting proceedings. This is a question essentially of fact, to be decided on the merits of each particular case. The Permanent Court of International Justice, when dealing with the S./S. *Wimbledon* dispute, gave this term a very wide interpretation in saying that its meaning is not confined to pecuniary interests only but may sometimes include moral ones as well.

I am, therefore, inclined to answer the last question in the affirmative. A State counting amongst its natio-

nals a large number of Jews, is *entitled* to call the Mandatory Power before the Permanent Court of International Justice whenever any provision relating to the Jewish National Home has been disregarded by it. It will, in such a case, base its action upon the right to protect the interests of its own nationals, and whether this interest is sufficient or not will, of course, be settled by the decision of the Court itself.

It may be mentioned here that the Polish Foreign Minister, Mr. Zaleski, when speaking at the League Council Meeting, after the Palestine disturbances of 1929, found it necessary to say that he was speaking as a representative of a State counting three million Jews. Did he not intend to convey thereby that he was not speaking merely as a member of the Council, the controlling body in the mandates system, but also as the representative of a State which was in duty bound to protect the interests of the Jewish section of its population, who possessed a right to the Jewish National Home?

The provision about the compulsory jurisdiction of the Court gives the right of reference to the Court only to members of the League of Nations. By the Anglo-American Treaty of December 1924, this right was accorded to the United States of America who have thereby obtained in this, as well as in other respects, the same status as other members of the League.

We have so far analysed the provision concerning the Permanent Court of International Justice contained in the texts of all the mandates. We endeavoured to establish the circumstances of its applicability and the objects of its use. However, the collaboration of the Court in the supervision of the mandates is possible not only on the basis

of this provision, but also as a result of the international order established by the League and its machinery.

II.

We have seen that the provision concerning the Permanent Court of International Justice in the texts of all the mandates can only be relied upon in certain definite cases, and that the normal and constant supervision is in the hands of the Council of the League through the Permanent Mandates Commission.

The League of Nations is essentially a political body and so is the Permanent Mandates Commission, although its members do not represent their own States but are nominated by the League itself and must be independent of their respective Governments. This, however, does not mean that the task of the League of Nations in the mandates system is a political one; on the contrary, it is chiefly juridical, and as Professor Rappard rightly remarked, if the action of the League in the domain of the mandates were to proceed in the political spirit, as opposed to the juridical spirit, the consequences might prove fatal ¹⁾.

But be this as it may, the League of Nations remains, on the whole, a political institution. Cases may, however, arise when in the administration of a mandate, a *strictly juridical opinion* is necessary, in fact the decision of a judicial body. Suppose, for instance, that a difference arose between the Council of the League and a mandatory power concerning the interpretation of a certain pro-

¹⁾ W. Rappard, *The practical working of the mandates system*, Journal of the British Institute of International Affairs, London, 1925, p. 222.

vision in the mandate. In such an event the only possible solution would be to apply to the Permanent Court of International Justice and obtain its impartial and authoritative opinion on the matter in controversy. This would be the case where the dispute occurred between a mandatory power and the Council as a whole, in its capacity as the controlling organ, and not in the case of a difference between a mandatory power and a member of the League acting in protection of its own interests or those of its nationals. The provision concerning the Court in the mandates texts is, in these circumstances, not applicable, and the only course open to the League is to ask the Court for an advisory opinion. According to Article 14 of the Covenant the Council of the League is entitled to apply to the Court for such opinion, and if an advisory opinion is not of the same obligatory force as a judgment, it is clear that both the League and the mandatory powers will always submit to the high juridical and moral authority of the highest tribunal and abide by its conclusions.

The Council of the League may apply to the Court either on its own initiative or at the instance of the Permanent Mandates Commission. It is in no way necessary that a difference should exist between the Council of the League and the mandatory power. An advisory opinion may be sought when the Council or the Commission are confronted with a complex juridical problem upon which a Court is better able to decide. When, in 1927, the Mandates Commission was faced with difficulties in connection with the interpretation of the South African Nationality and Flag Acts, it found it proper to propose to the Council to apply to the Court for an

advisory opinion thereon. A year later, when dealing with the petition of the "Kaokoland-und Minengesellschaft" (Kaoko Land and Mines Company) against the expropriation by the South African Government of property and certain concessions belonging to the Company, the Mandates Commission again considered the question of suggesting to the Council to obtain the Court's opinion on the matter.

It must be admitted that even in the only case when the Mandates Commission did in fact ask the Council to apply to the Court for an advisory opinion (*re* South African Nationality and Flag Acts) the Council did not show any inclination to follow this procedure. But what is relevant to note is that, as a matter of principle, such a procedure does exist.

In 1935 the Council of the League did, in a similar case, find it appropriate to secure the collaboration of the Court, when dealing with the petitions submitted to it by certain political parties in Danzig, against a number of legislative decrees issued by the Senate; the Council decided to refer the juridical points raised in these petitions to the Permanent Court of International Justice. The Court had to advise whether the said decrees were consistent with the Constitution of Danzig, or whether, on the contrary, they violated any of the provisions or principles thereof.

This precedent is also interesting in that it shows the direction which the efforts of the Zionist Organisation may take should it ever come to the conclusion that it would be desirable to have a certain point concerning the Palestine Mandate examined not in the political atmosphere of Geneva but rather in the serene atmosphere

of the Hague. In such a case the Zionist Organisation may petition the Permanent Mandates Commission, pointing out the strictly juridical character of the controversy between it and the Mandatory Power, and ask the Commission to propose to the Council that the matter be referred to the Court for its opinion thereon.

It should be remembered that only the Council or the Assembly of the League are entitled to apply to the Permanent Court of International Justice for an advisory opinion. A mandatory power interested in obtaining such opinion cannot do so, except through and with the consent of the Council or the Assembly.

When the Court has a request for an advisory opinion before it, only the respective mandatory power or any member of the League having an interest in the case may appear before the Court, to furnish information and to present written and oral statements and comments thereon. The population of the mandated territories themselves are not entitled to present any information, claim or comment to the Court, even when the matter before the Court concerns their vital interests. The only right accorded them is the submission of petitions to the League of Nations. They have no status before the Permanent Court of International Justice; according to the Statute of the Court only States or members of the League have access to it.

If this is true in respect of all the mandates, here again the Palestine Mandate occupies a special position.

Article 66 of the Revised Statute of the Court (Article 73 (2) of the Old Rules) provides that when asked for an advisory opinion, the Court may admit, besides States and members of the League, inter-

national organisations which it considers as likely to be able to furnish information on the question under discussion.

In applying this provision the Court has actually given it a very wide interpretation, and has often, especially in its advisory opinions concerning the activities of the International Labour Organisation, admitted a great number of international organisations.

It is beyond any shadow of doubt that the Jewish Agency, recognized by the Palestine Mandate as a "public body" with extensive prerogatives, belongs to the category of international organisations entitled to avail themselves of the privilege provided by the said Article 66 of the Statute. It follows, therefore, that in the event of an advisory opinion being called for on a point arising out of the Palestine Mandate, the Jewish Agency would be in a position to appear before the Court alongside of the Mandatory Power and other members of the League.

It should be observed in this connection that the said right of appearance is strictly confined to cases when the Court is invited to give an advisory opinion. It does not exist in cases where the Court is to deal with a dispute between a mandatory and a member of the League (as explained in Chapter I above), and where it is called upon not to formulate an opinion but to issue a judgment. It is, therefore, not surprising that in the *Mavrommatis* cases, although the discussions often turned around the role played by the Jewish Agency in obtaining the Rutenberg concession, the latter could not appear before the Court or furnish any written information on the subject.

In 1930, subsequent to the disturbances in Palestine of 1929 and the issue of the Passfield White Paper, the well-known jurists and statesmen, Lord Hailsham and Sir John Simon, proposed in a letter to *The Times* that steps be taken to induce the Council of the League to obtain an advisory opinion from the Permanent Court of International Justice on the points alleged by the Jewish Agency to be a departure from the obligations of the Mandate.

We stand at present in the midst of new disturbances in Palestine and reports are in circulation that the Government, in an inexplicable manifestation of weakness and indecision, is prepared to yield to acts of criminal violence, threats and intimidation and to suspend the Jewish right to immigration into Palestine; that it intends, in absolute disregard of the obligations internationally assumed by it, to impose certain restrictions and limitations upon the upbuilding of the Jewish National Home, which would be inconsistent with the terms of the Mandate.

It is well to remember that should the Jewish people be forced into a fight for the maintenance and the due observance of the rights solemnly granted to them by Great Britain and the Nations of the world, there is, in addition to other ways and means, the resort to the Hague Tribunal, the Guardian of Justice and the Conscience of the World.

THE OBLIGATIONS OF MEMBERS
OF THE
LEAGUE OF NATIONS TOWARDS ZIONISM

August, 1934.

At the annual convention of the Zionist Organisation of America held some weeks ago, the President, Mr. Morris Rotenberg, made the sensational statement that the leaders of American Zionists had discussed with representatives of the Soviet Union the question of the persecution of Zionism, the Hebrew language, etc., in Russia. In the presence of the American Ambassador to Russia, Mr. William C. Bullitt, American Zionists had met the Russian Ambassador to the United States of America, Alexander Troyanowsky, and interviewed Mr. Litwinoff, the Russian Foreign Minister.

The details of the discussions were, of course, not made public at the Convention. Mr. Rotenberg merely remarked that the Soviet Representatives had not made any formal promises, but their general attitude, as well as the special attention that the American Ambassador to Moscow, Mr. Bullitt, had promised to pay to the position of the Jews in Russia, gave room for the hope that certain improvements would come about.

One of the greatest and most influential sections of the World Zionist Organisation has, therefore, begun direct negotiations with Soviet Russia, and let us expect that this very important step will not end in failure, as did the attempt made by a number of outstanding Russian and Ukrainian Zionists in the same direction twelve years ago with Mr. Krestinsky, then Soviet Ambassador in Berlin.

The present international position of Soviet Russia, as well as the new direction taken by its foreign policy, create a relatively favourable political atmosphere for such negotiations, much more so than that which has existed until today. The present opportunity should on no account be missed; no efforts should be spared in mobilising all the factors that may influence the Soviet Government. This can suffer no delay either on the part of the Jewish central institutions concerned with the protection of the rights of the Jews in the Diaspora or on the part of the Zionist Organisation, which is primarily interested in the cessation of the persecution of Zionists and in securing facilities for the emigration of Jews from Russia to Palestine.

In this connection it may be noted that in the present circumstances any negotiations with Soviet Russia can only be based on arguments and reasons of a political character. The Jewish leaders can only appeal to the political wisdom of the Soviet Statesmen, in trying to convince them that Russia's attitude to Zionism and the Hebrew language is unjustified, that it will only be for her benefit to allow the Jews more freedom in expressing their ancient national culture, etc. They can also rely upon the public opinion of the world and upon other factors, but they cannot rely upon any legal arguments on which to base their demands.

The position of the Zionist Organisation will be fundamentally changed, if Russia, as it is supposed, will soon enter the League of Nations. The negotiations with the Soviet Government concerning Zionism will then take on an entirely different character. There will no longer be any question of favours, but claims based on legal grounds.

Palestine is administered by Great Britain "as Mandatory on behalf of the League". The Council of the League defined and confirmed the text of the Mandate for Palestine, and the Mandatory Power was put under obligation to secure the re-establishment of the Jewish National Home, to facilitate the immigration of Jews into Palestine, to encourage close settlement of Jews on the land, the acquisition by them of Palestinian citizenship, etc. It further provided that the Mandatory Power shall recognize an appropriate Jewish Agency as a public body endowed with certain prerogative rights in the realisation of the Mandate. All these obligations were imposed upon Great Britain by the League, i. e. by *all its members*, and Great Britain is responsible to them for the proper fulfilment of these obligations.

It would be contrary to common sense and to elementary juridical logic, if it were supposed that members of the League were free to act in their respective countries in such a way as to hamper the Mandatory in the execution of the tasks which they have themselves imposed upon it. The only sensible interpretation of Article 22 of the Covenant, as well as of the terms of the Palestine Mandate, must lead to the conclusion that *all members of the League, without exception, are internationally bound to assist in the establishment of the Jewish National Home*, not to mention the fact that they are forbidden to do anything which is liable to impede or delay the fulfilment of this task. It cannot, therefore, be admitted that a State member of the League shall regard the Zionist Organisation as an illegal association or that it shall put obstacles in the way of the emigration of Jews to Palestine.

Although certain States members of the League (e. g. Hungary) have, since the formal issue of the Palestine Mandate, failed, for a number of years, to act in accordance with the above submission, yet it never occurred to the Zionist Organisation, as far as is known, to apply for intervention in this matter on the part of the League for the purpose of obtaining thereby the official enunciation of the principle that no State member of the League may refuse to recognize the Zionist Organisation or hinder it in its activities. This is very much to be regretted, since the reluctant members concerned were in all the previous cases of the smaller States, and it would have been far easier to obtain the desired decision had the Zionist Organisation then raised the question before the League. This decision would thereafter serve as a precedent for the Zionist Organisation in the eventual negotiations with Soviet Russia, should the latter enter the League.

It may as well be noted here that should Russia become a member of the League it will not be in a position to plead that the Palestine Mandate, having been formulated before its entry, is not binding upon it. Such a plea would be devoid of all foundation, since from the moment of joining the League, a State becomes bound by all the previous resolutions and decisions adopted by the League. And even if Russia should, upon entering the League of Nations, make certain reservations, it is difficult to believe that the League will agree to a public denunciation of such a substantial provision as Article 22 of the Covenant.

Mention should also be made here of the fact that Iraq, when admitted to the League in 1932, did not

make any reservation in respect of Article 22 of the Covenant or any special mandate, and has thus ratified the Palestine Mandate including its provisions regarding the Jewish National Home.

The above considerations lead to the conclusion that every State upon entering the League, *eo ipso*, confirms the terms of Article 22 of the Covenant as well as those of all the mandates. It therefore undertakes to refrain from doing anything likely to render the task of the mandatory more difficult; moreover, the duty is incumbent upon it to do everything in its power to facilitate the proper execution of the mandate. This is true of all mandates, and is evidently also true of the Palestine Mandate and the provisions regarding the re-establishment of the Jewish National Home contained therein.

THE WORLD JEWISH CONGRESS

AND ZIONISM



October, 1934.

Several months ago the Executive of the American Jewish Congress addressed an appeal to the Jews of the United States inviting American Jewry to participate in the work of creating a World Jewish Congress as the "Parliament of the Jewish People of the whole World". In this appeal a serious attempt was made to formulate a "present-day programme" for the World Congress. This programme provides, *inter alia*, for "representation of the Jews as a people in the League of Nations for the protection of their interests". It is also emphasized in the appeal that the programme does not contain "a single point in which every Jewish group—to whatever class, party or tendency it may belong,—may not be interested".

It is quite possible that, at first sight, the point of Jewish representation in the League of Nations is not only a principle which ought to be acceptable to every Jewish party, but is a demand which every Jew should heartily welcome and support.

Yet I believe that it is worthwhile from a Zionist point of view to ponder a little over this question and to see whether this demand does not contradict fundamental Zionist principles and the Zionist conception.

The chief aim of Zionism is to normalise Jewish life by creating a territorial and political centre in Palestine. The restitution of the greatest possible part of the Jewish people to Palestine, and not its dispersion, as

minorities, throughout the world, should form the basis for the solution of the Jewish question. Upon the day when the Jewish National Home will have been constructed and re-established, the conception of the Diaspora ("Galuth") in its present bitter and tragic sense will no longer exist. The Jewish communities which will remain outside of Palestine will, more or less, feel the Diaspora in the same way as the numerous minorities condemned by history to live away from their motherlands and under the rule of foreign majorities.

When one analyses the demand for Jewish representation in the League of Nations in the light of these fundamental principles of the Zionist ideology, one must conclude that it is not easy to make it harmonise with the Zionist doctrine. This demand can be interpreted in no other way than as a demand to recognize the Jewish people as an organised "inter-territorial" entity, which should be admitted *as such* to the League of Nations. But a demand of this kind is in its very essence not "Zionistic", it is based rather on the so-called "Diaspora-conception" of the Jewish people as a people scattered among the nations of the world.

Zionism, of course, also claims and champions the recognition of the Jews as a people. But for Zionism this is not an end in itself. The cardinal principle of the Zionist programme consists of the claim for the recognition of the right of the Jewish people to re-establish its existence as a nation in its historical homeland, in order that, in time, it should become a real member of the family of nations with equal rights. Indeed, the Man date for Palestine already contains the international recognition of the existence of a Jewish people, with

a special representative body, to whom certain rights and prerogatives have been granted. But the purpose of the Palestine Mandate is not the Jewish Agency; its main object is the creation of the Jewish National Home. The Jewish Agency only serves as a means to an end, and with the realisation of its aim, the Agency provided by the Mandate will have fulfilled its function.

Hence, Zionism hopes to reach the point where the Jewish people will, sooner or later, cease to be an exception, to which the general rules and laws common to all other nations are, as at present, not applicable. From a strictly Zionist point of view, every attempt to base Jewish policy on the *present status* of the Jewish people must, therefore, be considered as undesirable and inadvisable. Any attempt to sanction and legalise *the existence of the Jewish people as an extraterritorial people* is, for a Zionist, an unacceptable programme, since the chief aim of Zionism is to concentrate in Palestine the greatest possible number of Jews, as quickly as possible, thereby transforming the Jewish people from an extraterritorial entity into a *territorial nation*, with a State, normal economy and culture of its own.

These conclusions will, perhaps, appear in the eyes of many rather far-reaching. Some may assert that the danger is not so great, if representation for the Jewish people in its present-day status as an extraterritorial entity were admitted to the League of Nations *only provisionally*, until such time as Palestine becomes the Jewish reality, which will enable the Jews finally to enter the League. Some may also argue that, during the War, Zionists—and even the London Zionist Conference of 1919—often claimed that the Jewish people as such should be

accepted as a member of the League. They may finally call our attention to the fact that in serious scientific and political circles the idea is prevalent that the State is, after all, not an idol, not the last word in the organization of human society, and that besides *States* (*Staatsgemeinschaften*) the existence of "peoples" (*Volksgemeinschaften*) must also be legally recognized, peoples with the right to unite over and above the boundaries of States and to create international entities and bodies.

Yet all these objections, however attractive they may appear, are not well founded. To prove this, it is necessary to examine the claim for Jewish representation in the League of Nations not from the standpoint of the Zionist programme, but from the point of view of the practical possibilities for the realisation of this claim.

I doubt whether there is any person so naïve as to believe that this claim has the slightest prospect of being realized in the near future. Everyone knows that to-day the League of Nations is not a League of peoples but of States. To admit an extraterritorial people as a member of the League of Nations would be a revolutionary step, and even the most superficial observer of the League knows that to-day it would never consider such a step, and that it would not be prepared to do it either to-morrow or the day after.

Surely the authors of the appeal were aware of all this, and the position is not a whit altered by the fact that the demand has been brought forward in a so-called "present-day programme." In truth, it is a demand which is not a matter of actuality, but a claim for action in the very remote future. If this is really so, then the argument, that Jews under their present status should

be provisionally admitted to the League until Jewish Palestine shall have been created, naturally fails.

The demand for Jewish representation in the League cannot, therefore, be considered otherwise than as a declaration for the future. But as such it is still more dangerous, because it undermines the basis of the Zionist ideal, which aims to see the Jewish people entering the League of Nations, in the future, not as a dispersed people, but as a nation living in its own State.

The argument concerning the new forms of the organisation of humanity, for which an ideological fight has recently been carried on in different circles, must also be considered as "music of the future". The future will show whether the evolution of the world is to bring about such a radical transformation in the social structure that, side by side with States, extraterritorial peoples will also be recognized as holders of international rights. At any rate, this is a question for the remote future. And if the line of historical development will indeed lead to such a new international order, in which every people will, besides its national State, also be legally organised beyond the boundaries of States, then the ideal of a Zionist is that upon the attaining of such an order, the Jews, too, should possess a territorial centre, where they will not be a minority and which would serve as the natural political centre for the Jews abroad. At the present stage of the upbuilding of the Jewish Home, nothing is as urgent as to hammer incessantly at the conscience of the world that there is no other constructive solution of the Jewish problem than the re-establishment of the Jewish National Home in Palestine. Every claim not dictated by this aim and not having as its

basis the future of the Jewish Homeland, is not consistent with the Zionist programme and contradicts the aims of the Zionist ideal.

Finally, the objection that, at the end of the War, the Zionists themselves announced or actively participated in the adoption of a demand for Jewish representation in the League of Nations, cannot be used to-day as an argument in favour of the appeal of the American Jewish Congress. One must remember that when this demand was made, there were hazy ideas predominating in the world about the proposed League of Nations. In those years of blind enthusiasm and rosy dreams, people believed that on the ruins of the old world there would be established a really new world order, and that the League would be a League of free peoples and nations, and not only a union of Governments and States. But disillusion soon came, and that which was psychologically possible in the atmosphere of the last years of the War and of the Peace Conference, can hardly be invoked as an argument in favour of a document written and published in 1934.

In the controversy about the so-called "Diaspora-work", i. e. the political, social and cultural activities of the Jewish communities in the countries of their dispersion, I hold a positive attitude and am deeply convinced of the necessity for a central Jewish Representative Body, invested with the authority to fight for Jewish rights. But from all the above-mentioned considerations it may be deduced that the inclusion of the demand for Jewish representation on the League of Nations in the programme of a World Congress, is, on closer analysis, in conflict with the Zionist conception

of the Jewish question. This claim, moreover, has no prospect of realisation in the near future, and it would therefore be advisable to formulate the platform of the World Congress so as to remain within the framework of the possible, the attainable and the acceptable.



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